2025-1363

United States Court of Appeals for the Federal Circuit

CHRIS J. KROENUNG,

Petitioner

v.

DEPARTMENT OF DEFENSE,

Respondent

Petition for Review from the Merit Systems Protection Board
in CH-0752-23-0234-I-1

CORRECTED JOINT APPENDIX

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November 11, 2025

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UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CENTRAL REGIONAL OFFICE

CHRIS J. KROENUNG,
Appellant,

v.

DEPARTMENT OF DEFENSE,
Agency.

DOCKET NUMBER
CH-0752-23-0234-I-1

DATE: October 8, 2024

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Mary Clements McKenney, Springfield, Virginia, for the agency.
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BEFORE
David R Lidow
Administrative Judge

INITIAL DECISION

INTRODUCTION

On March 20, 2023, the appellant, Christopher J. Kroenung, filed an appeal with the Board challenging his removal from his position as an Aeronautical Analyst with the Department of Defense, National Geospatial-Intelligence Agency (NGA or agency), for conduct unbecoming based on his continuing refusal to comply with the agency's mandated COVID-19 testing policy in 2022. Initial Appeal File (IAF), Tab 1. The Board has jurisdiction over this appeal. *See* 5 U.S.C. §§ 7501-7503. The appellant's requested hearing was held on January 17, 2024. IAF, Tab 33.

For the reasons discussed below, the agency's decision to remove the appellant from federal service is AFFIRMED.

ANALYSIS AND FINDINGS

Background

The appellant began his employment with the agency in 2004 as an Aeronautical Analyst with the NGA stationed in Springfield, Virginia. IAF, Tab 5; *see also* Hearing Recording (HR) (Kroenung Testimony), Tab 33. In roughly 2008, the appellant was assigned to a unit referred to as "Geo-areas," where his responsibilities included aggregating aeronautical data from his assigned host countries and transferring the collected data to an agency database. HR, Tab 33. In 2015, the appellant was assigned to the Terminal En-route Procedures Branch, (TERPS), with similar job responsibilities, where he worked on developing flight approach and landing procedures. *Id*. In 2018, Justin Nahlik, TERPS Branch Chief, became the appellant's first-line supervisor. *Id.; see also* HR, Tab 33 (Nahlik Testimony).

Agency's COVID-19 Testing Policy

In December 2021, while working in TERPS under Nahlik's supervision, the agency adopted national guidance and workplace safety protocols regarding COVID-19 testing procedures known as "Force Health Protection Guidance (Supplement 23) Revision 3—Department of Defense Guidance for Coronavirus Disease 2019 Vaccination Attestation, Screening Testing, and Vaccination Verification, 20 December 2021" and "Supplemental Guidance for Implementing Mandatory COVID-19 Vaccination Attestation, Screening Testing, and Vaccination Verification of DoD Civilian Employees for the DoD Fourth Estate—Revision 3, 10 January 2022." IAF, Tab 5, Subtabs 4k and 4l. Together, the policy guidance mandated that all subject federal employees, including NGA employees, who were not fully vaccinated for COVID-19, would be required to

provide documentation of a negative COVID-19 test on a weekly basis when reporting to their worksite. *Id.*; *see also* HR, Tab 33 (Nahlik and Kroenung Testimony).

Appellant's Willful Refusal to Abide by COVID-19 Testing Policy and Progressive Discipline

On January 3, 2022, the appellant, who had not provided proof of vaccination status, reported to work without documentation of a negative COVID-19 test as required by NGA's testing program in accordance with the DoD guidance noted above. HR, Tab 33 (Nahlik and Kroenung Testimony). The appellant was directed by his Division Chief to obtain a COVID-19 test and provide proof of the negative test before he would be permitted to enter the worksite. *Id.* The appellant failed to comply with the directive and refused to obtain a COVID-19 test. *Id.*

As a result, on February 17, 2022, Nahlik issued the appellant a written reprimand for conduct unbecoming a federal employee, in which he further informed the appellant, "it is my hope that this Letter of Reprimand will serve as a corrective measure and convey to you the importance of following Agency directives in order to comply with COVID-19 safety and force health protection measures." IAF, Tab 5, Subtab 4i. The appellant was given seven calendar days to comply with the agency's COVID-19 testing policy and was further informed that continued non-compliance would result in more severe disciplinary action, up to and including removal from his position. *Id.* The agency also advised the appellant that he could seek a reasonable accommodation based on a sincerely held religious belief or medical disability. *Id.* The appellant did not pursue any accommodation on medical or religious grounds, later acknowledging that neither exception pertained to him. HR, Tab 33 (Kroenung testimony).

In the weeks that followed, the appellant continued to refuse to abide by the agency COVID-19 testing directive. *Id.* (Nahlik Testimony). Subsequently,

on March 1, 2022, the appellant notified his supervisor that he did not plan to come to work that week to avoid the testing requirement. *Id.*; *see also* IAF, Tab 5, Subtab 4h. The following week, March 7, 2022, the appellant failed to inform his supervisor that he did not plan to come to work that week based on the COVID-19 testing requirement. *Id.* Consequently, the agency proposed that the appellant receive a 10-day suspension without pay for conduct unbecoming based on his refusal to follow agency policy requiring submission of a negative test result before entering the worksite. *Id.* In his June 6, 2022, written response to the notice of suspension, the appellant argued that the COVID-19 testing requirement was unlawful, discriminatory, and ineffective. *Id.*, Subtab 4g. On July 8, 2022, Vietta Williams, Director of NGA's Human Development Directorate who served as the deciding official, affirmed the 10-day suspension after considering the appellant's written reply. *Id.*, Subtab 4f; HR, Tab 33 (Williams Testimony).

Appellant's Removal for Conduct Unbecoming Based on Failure to Follow COVID-19 Testing Policy

After serving the 10-day suspension from July 18-27, 2022, the appellant continued to refuse to comply with the agency's COVID-19 testing requirement IAF, Tab 5, Subtab 4e. The appellant informed Nahlik that he would not submit to testing, but asked if he could utilize accrued leave after the end of his suspension. HR, Tab 33 (Kroenung Testimony). Nahlik denied the request citing the fact that the appellant was receiving in-office training during this period, and that his absence would cause the agency to suffer mission degradation due to the appellant's workload at the time. *Id.* (Nahlik Testimony).

On August 8, 2022, when the CDC community level measuring the prevalence of COVID-19 in the local area was reported as high, the appellant informed Nahlik that he would not be submitting to COVID-19 testing and, therefore, he was not allowed to return to the worksite. *Id.* (Kroenung and Nahlik

Testimony). The following week on August 15, 2022, when the CDC community level was reported as medium, the appellant again refused to comply with the agency's COVID-19 testing program and notified Nahlik that he would not submit to COVID testing. *Id*.

Given the agency had previously issued the appellant a written reprimand and 10-day suspension based on his prior refusal to comply with the agency's policy directives, on October 24, 2022, the agency proposed the appellant's removal for conduct unbecoming a federal employee based on his continuing failure to comply with the agency's COVID-19 testing requirements, citing the weeks of August 8 and 15, 2022, as two separate specifications for the underlying misconduct. IAF, Tab 5, Subtab 4e. On November 4, 2022, the appellant submitted his written response, which repeated the same objections as his earlier reply to the 10-day suspension. *Id*., Subtab 4d. The agency's deciding official, Director Williams, considered the appellant's written response and the relevant Douglas factors. *Id*., Subtabs 4b and 4c; *see also* HR, Tab 33 (Williams Testimony). Director Williams determined that the agency's progressive discipline had been ineffective in deterring the appellant's misconduct, and that the appellant's persistent refusal to abide by agency policy rendered him unable to perform his job duties. *Id*. Director Williams concluded that the appellant's misconduct undermined the agency's confidence and trust in his ability to do his job. *Id*. Accordingly, on February 28, 2023, Director Williams upheld the appellant's removal with an effective date of March 4, 2023. IAF, Tab 5., Subtab 4b. On March 22, 2023, the appellant timely filed an appeal with the Board. IAF, Tab 1. The appellant's requested hearing was held on January 17, 2023. *Id*., Tab 33.

Applicable Law and Burden of Proof

To sustain an adverse action before the Board, the agency must prove by a preponderance of the evidence the factual basis for the misconduct charged, and

establish that disciplinary action, based on the proven misconduct, promotes the efficiency of the service. *See* 5 U.S.C. §§ 7513(a) and 7701(c)(1)(B); 5 C.F.R. § 1201.56(b)(1). A preponderance of the evidence is that degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue. 5 C.F.R. § 1201.4(q).

The "efficiency of the service" requirement includes a showing that some disciplinary action is warranted (the "nexus" requirement) and that the particular penalty imposed by the agency is within the tolerable limits of reasonableness. Thus, three distinct elements must be proven by the agency in any adverse action. *Pope v. U.S. Postal Service*, 114 F.3d 1144, 1147 (Fed. Cir. 1997); *Douglas v. Veterans Administration*, 5 M.S.P.R. 280, 302-303 n.67, 307- 308 (1981).

When an agency supports a charge by more than one specification, proof of one or more of the supporting specifications is sufficient to sustain the charge. *Burroughs v. Department of the Army*, 918 F.2d 170, 172 (1990) (discussing that where more than one event or factual specification supports a single charge, proof of one or more, but not all, of the supporting specifications is sufficient to sustain the charge); *Christopher v. Department of the Army*, 107 M.S.P.R. 580, 590 (2007). A charge must be viewed in light of the accompanying specifications and should not be technically construed. *Otero*, 73 M.S.P.R. at 202.

The Agency Proved the Charge of Conduct Unbecoming Based on the Appellant's Repeated Refusal to Follow Agency COVID-19 Testing Policy

As noted above, the agency charged the appellant with conduct unbecoming based on two supporting specifications, which set forth, in pertinent part:

> Specification #1: On or about 8 August 2022, when the CDC Community Level at NCW was HIGH, you failed to comply with the agency's COVID-19 testing program when you notified your supervisor that you are refusing to test.

> Specification #2: On or about 15 August 2022, when the CDC Community Level at NCW was MEDIUM, you failed to comply with the agency's COVID-19 testing program when you notified your supervisor that you are refusing to test.

IAF, Tab 5, Subtab 4e. The proposed removal specifically referred to the fact that the appellant had been disciplined on two prior occasions for similar misconduct, having received a written reprimand on February 17, 2022, and 10-day suspension on July 8, 2022, and in both instances the appellant was warned that continued non-compliance would result in more severe disciplinary action, up to and including removal. *Id.*

It is well-established that an agency is permitted to bring a general charge in the form of conduct unbecoming, so long as the charge and supporting specifications describe in narrative form the actions that constitute misbehavior. *Colbert v. United States Postal Service*, 93 M.S.P.R. 467, ¶ 12 (2003) (citing *Cross v. Department of the Army*, 89 M.S.P.R. 62, ¶ 9 (2001)). To prove a generically labeled charge, such as conduct unbecoming or unacceptable conduct, the agency must prove the appellant committed the acts alleged in support of this broad label. *See Canada v. Department of Homeland Security*, 113 M.S.P.R. 509, ¶ 9 (2010) (citations omitted). Unless specified in the charge, the agency is not required to show intent or that the conduct in question actually embarrassed the agency. *See Crouse v. Department of the Treasury*, 75 M.S.P.R. 57, 63 (1997), rev'd on other grounds and remanded sub nom. *Lachance v. Merit Systems Protection Board*, 147 F.3d 1367, 1371-72 (Fed. Cir. 1998).

Here, it is undisputed and acknowledged by the appellant that in December 2021, the agency adopted and implemented DoD guidance requiring NGA employees to show proof of COVID-19 vaccination status or, alternatively, to submit a negative test result on a weekly basis before gaining access to agency facilities. IAF, Tab 5, Subtabs 4k and 4l; *see also* HR, Tab 33 (Kroenung

Testimony). I find the agency provided unrefuted and credible evidence that the policy was implemented in accordance with the cited DoD guidance, and that NGA employees were notified of the requirements in advance. *Id.; see also* HR, Tab 33 (Williams and Nahlik Testimony). The appellant does not dispute having been aware of the policy and receiving notification in advance of its implementation. *Id*. He also acknowledged having been previously disciplined for his refusal to abide by the agency's COVID-19 testing policy and that he informed his supervisor Nahlik of his intention not to comply with the policy in the future, notwithstanding the prior disciplinary action. *Id*. The appellant admitted that he did not follow the agency's COVID-19 testing policy on August 8 and 15, 2022, the time period cited in the specifications pertaining to his proposed removal, and he acknowledged that he did not pursue any exception based on religious or disability accommodation because he did not believe he was entitled to one. *Id*. At hearing, the appellant reiterated his objections to the testing mandate, arguing that the policy is ineffective and unlawful. HR, Tab 33 (Kroenung Testimony). However, he presents no evidence in support of his contentions, apart from his own personal beliefs as to the validity of the testing mandate, which, as discussed above, I find was lawfully adopted per DoD guidance and provided to employees in advance for purposes of compliance.

Therefore, based on the foregoing and my review of the record evidence, I find that the agency has proven by preponderant evidence that the appellant engaged in conduct unbecoming by failing to provide a negative COVID-19 test result for the weeks of August 8 and 15, 2022, in violation of the agency's then-current COVID-19 screening testing protocols. The charge is SUSTAINED.

The Agency Has Proven Nexus and Impact on Efficiency of Service Based on the Appellant's Misconduct

An agency may take action against an employee under 5 U.S.C. Chapter 75 only for such cause as will promote the efficiency of the service. *See, e.g., Hatfield v. Department of the Interior*, 28 M.S.P.R. 673, 675 (1985). To prove that its action promotes the efficiency of the service, "the agency must show by preponderant evidence that there is a nexus between the misconduct and the work of the agency." *Brown v. Department of the Navy*, 229 F.3d 1356, 1358 (Fed. Cir. 2000). *See also Winlock v. Department of Homeland Security*, 110 M.S.P.R. 521, 531 (2009) (noting that "the nexus requirement, for purposes of whether an agency has shown that its action promotes the efficiency of the service, means there must be a clear and direct relationship between the articulated grounds for an adverse action and either the employee's ability to accomplish his or her duties satisfactorily or some other legitimate government interest").

An agency may establish nexus by showing that the employee's conduct (1) affected his or his coworkers' job performance; (2) affected management's trust and confidence in the employee's job performance; or (3) interfered with or adversely affected the agency's mission. *Canada v. Dept. of Homeland Security*, 113 M.S.P.R. 509, 514 (2010). Here, I find the appellant's failure to comply with the agency's COVID-19 testing policy adversely impacted the agency's ability to ensure the health and safety of its workforce and impeded the agency's ability to conduct its operations with full staffing due to the appellant being unable to report to work resulting from his refusal to follow agency policy. I credit testimony from agency management officials noting the mission degradation that had occurred and would continue due to the appellant's inability to report to duty onsite, and the impact on other staff members having to redistribute the appellant's job duties. HR, Tab 33 (Nahlik and Williams Testimony). In addition, I find the appellant's failure to comply with the agency's testing policy adversely affected the agency's trust and confidence in his ability to follow

instructions. *Id*. Accordingly, I find that the agency has established a nexus between its sustained charge and the efficiency of the service.

The Agency's Penalty Selection of Removal Was Within Tolerable Limits of Reasonableness

Where, as here, the Board sustains an agency's charge, it will defer to the agency's penalty determination unless the penalty exceeds the range of allowable punishment specified by statute or regulation, or unless the penalty is so harsh and unconscionably disproportionate to the offense that it amounts to an abuse of discretion. *Batara v. Department of the Navy*, 123 M.S.P.R. 278, ¶ 5 (2016); *Saiz v. Department of the Navy*, 122 M.S.P.R. 521, ¶ 5 (2015). That is because the employing agency, not the Board, has primary discretion in maintaining employee discipline and efficiency. *Saiz*, 122 M.S.P.R. 521, ¶ 5. The Boad will not displace management's responsibility, but instead will ensure that managerial judgment has been properly exercised. *Id.; see also Guise v. Department of Justice*, 330 F.3d 1376, 1382 (Fed. Cir. 2003) ("The choice of penalty is committed to the sound discretion of the employing agency and will not be overturned unless the agency's choice of penalty is wholly unwarranted in light of all the relevant factors.").

Mitigation of an agency-imposed penalty is appropriate only where the agency failed to weigh the relevant factors or where the agency's judgment clearly exceeds the limits of reasonableness. *Batara*, 123 M.S.P.R. 278, ¶ 5; *Saiz*, 122 M.S.P.R. 521, ¶ 5. The deciding official need not show she considered all the mitigating factors, and the Board will independently weigh the relevant factors only if the deciding official failed to demonstrate that she considered any specific, relevant mitigating factors before deciding on a penalty. *Saiz*, 122 M.S.P.R. 521, ¶ 5*; see also Chin v. Department of Defense*, 2022 MSPB 34, ¶¶ 24-25. Finally, in assessing the reasonableness of a penalty, the Board places primary importance upon the nature and seriousness of the offense and its relation

to the appellant's duties, position, and responsibilities, including whether the offense was intentional or was frequently repeated. *Id.; see also Arena v. U.S. Postal Service*, 121 M.S.P.R. 125, ¶ 6 (2014), aff'd *per curiam*, 617 F. App'x 996 (Fed. Cir. 2015).

The factors relevant for consideration in determining the appropriateness of a penalty were set out by the Board in *Douglas v. Veterans Administration*, 5 M.S.P.R. 280, 305-06 (1981). While not purporting to be exhaustive, the Board identified the following 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 supervisors' confidence in the employee's 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) potential for the employee's rehabilitation; (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. *Id*. at 305-06

Here, the deciding official, Director Williams, testified that she found the appellant's repeated willful refusal to follow agency COVID-19 testing policy and failure to provide a COVID-19 test result extremely serious, and I find that she provided a credible, detailed explanation as to the adverse impact upon the agency in attempting to deal with an ongoing pandemic to ensure the health and safety of its workforce and continuity of operations. HR, Tab 33 (Williams Testimony). She testified that the appellant was on clear notice of the consequences of his misconduct and his actions were a breach of the agency's trust in his ability to uphold its mission. *Id.* Director Williams noted that his continuing reluctance to adhere to agency policies called into question his judgment, reliability, and trustworthiness, resulting in the agency's lack of confidence in the appellant's ability to do his job or follow agency policy. *Id.* She specifically considered the agency's attempts to use progressive discipline in improving his behavior, providing him with several opportunities to adhere to agency policy by issuing first a written reprimand and then a 10-day suspension, neither of which resulted in the appellant's compliance. *Id.* Director Williams considered the appellant's past performance and tenure with the agency, finding those factors to be insufficient to overcome the adverse impact of the agency's persistent refusal to follow agency policy regarding COVID-19 testing. *Id.*

I find Director Williams credibly testified in a manner consistent with her written Douglas factor analysis as it pertains to notoriety of the offence and impact upon the agency's reputation, noting that tolerance of the appellant's behavior during a global pandemic would create an impression of defiance and disregard of the health and safety of the agency's workforce and general public, as well as disregard for properly promulgated regulations and guidance of the executive branch. *Id.*; see also IAF, Tab 5, Subtab 4c. In addition, given the appellant's open refusal to comply with the testing policy, and statements to his supervisor suggesting that he would not change his stance on the issue, Director

Williams reasonably concluded that there would be no opportunity for rehabilitation with a lesser penalty. *Id.*

Director Williams also found that the penalty was consistent with other employees, that the appellant presented no unusual personal circumstances justifying his behavior, and that no alternative sanctions would be available under the circumstances to deter his continuing refusal to comply with the agency's COVID-19 testing policy. *Id.* With regard to these last considerations, I note that the appellant testified as to his willingness to use accrued annual or sick leave, and his efforts to seek temporary telework authorization, to avoid having to comply with the testing mandate. HR, Tab 33 (Kroenung Testimony). However, I find compelling and persuasive Nahlik's testimony that the solutions suggested by the appellant were unworkable from the agency's perspective because the appellant was required to perform his job duties at his worksite and also because the appellant was in the midst of training for an assignment within Geo-areas, a unit within which he had not worked for several years. Id. (Nahlik Testimony). The training being provided to the appellant required engagement and oversite that could only be conducted in the office. *Id.* I credit the agency's explanation as to mission degradation and do not find support for the appellant's speculation as to personal animus or any other reason as to why Nahlik could not authorize telework or accrued leave simply as a means of allowing the appellant to avoid the COVID-19 testing requirement. HR, Tab 33 (Nahlik and Kroenung Testimony).

The appellant also cites to several other employees who had expressed concerns with the agency's testing policy and, according to the appellant, received some form of accommodation. *Id.; see also* IAF, Tab 33 (Stipulations). As the agency points out, however, the anecdotal information provided by the appellant does not suggest that he was treated in a disparate manner. Indeed, the employees identified by the appellant as comparators each had distinguishing characteristics that render them inapposite for comparison, either because they

had formally requested reasonable accommodations on medical or religious grounds, or because their jobs were eligible for fulltime telework. *Id*. None of these factors applied to the appellant's circumstances, however, as he acknowledged from the outset that he was not entitled to any of the applicable exceptions. HR, Tab 33 (Kroenung Testimony). Therefore, I find that the agency's disciplinary considerations as to the appellant were not inconsistent with other agency employees.

The Board's role is not "to displace management's responsibility" in deciding on the appropriate penalty, but only "to ensure that managerial judgment has been properly exercised." *Singletary v. Department of the Air Force*, 94 M.S.P.R. 553, ¶ 9 (2003). Here, after considering Director Williams's testimony, I find that she fully and carefully considered the relevant Douglas factors, and I concur that the sustained charge is extremely serious and outweighs any mitigating factors. Accordingly, I find that the agency's selected penalty of removal is warranted under the circumstances and is within the tolerable bounds of reasonableness and promotes the efficiency of the service. *See Lachance v. Devall*, 178 F.3d 1246, 1260 (Fed. Cir. 1999); *Beard v. General Services Administration*, 801 F.2d 1318, 1322 (Fed. Cir. 1986) (when the agency's penalty is not unreasonable, it must be accorded deference by the Board). Thus, I find no basis to disturb the agency's chosen penalty based on the sustained charge.

DECISION

The agency's action is AFFIRMED.

FOR THE BOARD: David R Lidow
_____
David R Lidow
Administrative Judge

NOTICE TO APPELLANT

This initial decision will become final on **November 12, 2024**, unless a petition for review is filed by that date. This is an important date because it is usually the last day on which you can file a petition for review with the Board. Any petition for review must be filed within 35 days after the date of issuance of the initial decision or, if the petitioner shows that the initial decision was received more than 5 days after the date of issuance, within 30 days after the date the petitioner received the initial decision. The date that the petitioner receives the initial decision is determined according to the standard set forth at § 1201.22(b)(3), pertaining to an appellant's receipt of an agency decision. If the petitioner is represented, the 30-day time begins to run upon receipt of the initial decision by either the representative or the petitioner, whichever comes first. The date on which the initial 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.

Your petition must state your objections to the initial decision, including all of your legal and factual arguments, and must be supported by references to applicable laws or regulations and by specific references to the record. You must file it with:

INDEX

Chris Kroenung

V.

Department of Defense

MSPB Docket No. CH-0752-23-0234-I-1

I - Initial Appeal

TAB	RECORD TYPE	DESCRIPTION OF DOCUMENT	DATE OF RECEIPT OR ISSUANCE
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2	IA	MSPB - Acknowledgment Order	03/22/2023
3	IA	Agency - Designation of Representation	03/23/2023
4	IA	Agency - Agency Representative Addition	03/23/2023
5	IA	Agency - Agency File and Narrative Response	04/11/2023
6	IA	MSPB - Preliminary Status Conference Order	04/19/2023
7	IA	Agency - Agency Motion for Continuance	04/20/2023
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10	IA	MSPB - Order Rescheduling	04/21/2023
11	IA	MSPB - Order and Summary of Status	05/03/2023
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23	IA	Appellant - Response to 11 14 2023 Response	11/21/2023
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27	IA	Appellant - Response to 12 04 2023 Prehearing	01/09/2024

TAB	RECORD TYPE	DESCRIPTION OF DOCUMENT	DATE OF RECEIPT OR ISSUANCE
28	IA	Appellant - Response to 12 04 2023 ORDER	01/09/2024
29	IA	Agency - Response to 12 04 2023 Order and	01/09/2024
30	IA	Appellant - Response to 12 04 2023 Hearing	01/10/2024
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33-4	IA	Court Reporter - Hearing - Court Reporter	01/17/2024
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36	IA	MSPB - Initial Decision	10/08/2024

MERIT SYSTEMS PROTECTION BOARD

Appeal Form--Appellant and Agency Information

Please type or print legibly. OMB No. 3124-0009

1. Name (last, first, middle initial)

Kroenung, Chris, J.

2. Present Address (number and street, city, state, and zip code)

Address: [redacted]

City, State, Zip Code: Ballwin, Missouri, 63021, United States of America

3. Telephone numbers (include area code) and E-Mail Address
You must notify the Board in writing of any change in your telephone number(s) or e-mail address while your appeal is pending.

Home: (314) 315-6169 Work:

Fax: Cell:

E-mail Address: ckroenung@sbcglobal.net Other Phone Type:

4. Do you wish to designate an individual or organization to represent you in this proceeding before the Board? (You may designate a representative at any time. However, the processing of your appeal will not normally be delayed because of any difficulty you may have in obtaining a representative.)

☐ Yes ☑ No

5. Name, address, and telephone number of the agency that took the action or made the decisions you are appealing (include bureau or division, street address, city, State and Zip code)

Agency Name: Department of Defense
Bureau: NATIONAL GEOSPACIAL INTELLIGENCE AGENCY
Address: 3200 S Second Street
City, State, Zip code: St. Louis , Missouri, 63021, United States of America
Agency Phone: (314) 676-4000

6. Your Federal employment status at the time of the decision or action you are appealing:

☐ Temporary ☑ Permanent ☐ Applicant
☐ Term ☐ Retired ☐ Seasonal
☐ None

7. Type of appointment (if applicable):

☐ Competitive ☐ SES ☑ Excepted
☐ Postal Service ☐ Other

8. Your occupational series, position title, grade, and duty station at the time of the decision or action you are appealing (if applicable):

Occupational Series or Cluster: Safety of Navigation
Position Title: Aeronautical Analyst
Grade or Pay Band: 3
Duty Station: St Louis Missouri

9. Are you entitled to veteran's preference? See 5 U.S.C. 2108.

☑ Yes ☐ No

10. Length of Government Service (if applicable):

18 Years 6 Months

11. Were you serving a probationary, trial, or initial service period at the time of the action or decision you are appealing?

☐ Yes ☑ No

Appeal Number: **202301252**
Submission Date: **3/20/2023 10:00:05 AM**
Confirmation Number: **218346**

MERIT SYSTEMS PROTECTION BOARD

Appeal Form--Appellant and Agency Information

Please type or print legibly.

HEARING: You may have a right to a hearing before an administrative judge. If you elect not to have a hearing, the administrative judge will make a decision on the basis of the submissions of the parties. Do you want a hearing?

12. Do you want a hearing? ☑ Yes ☐ No

E-Filing: Registration as an e-filer enables you to file any or all of your pleadings with the Board in electronic form. Registration also means you consent to accept service of all pleadings filed by other registered e-filers and all documents issued by the Board in electronic form. You will receive these as PDF documents at the e-mail address you provided the Board. If registered as an e-filer, you may file any pleading, or portion of a pleading, by non-electronic means. You can withdraw your registration as an e-filer at any time.

13. Do you wish to register as an E-Filer in this appeal?

☑ I elect to E-File ☐ I decline to E-File

14. **I certify that all of the statements made in this form and all attached forms are true, complete, and correct to the best of my knowledge and belief.**

Chris J. Kroenung, Appellant **Date:**

MERIT SYSTEMS PROTECTION BOARD

Appeal of Agency Personnel Action or Decision (Non-retirement)

Complete this form and attach it to MSPB Form 185-1 if you are appealing an agency personnel action or decision (other than a decision or action affecting your retirement rights or benefits) that is appealable to the Board under a law, rule, or regulation. If the personnel See 5 CFR 1201.3(a) for a list of appealable personnel actions and action or decision is appealable to the Board, you should have received a final decision letter from the agency that informs you of your right to file an appeal with the Board.

Please type or print legibly. OMB No. 3124-0009

Please submit only the attachments requested in this form at this time. You will be afforded the opportunity to submit detailed evidence in support of your appeal later in the proceeding.

Name *(last, first, middle initial)* Kroenung, Chris, J.

1. Check the box that best describes the personnel action or decision taken by the agency you named in MSPB Form 185-1 that you are appealing. (If you are appealing more than one action or decision, check each box applies.)

- ☐ Veterans Administration Senior Executive Service Removal from civil service
- ☐ Veterans Administration Senior Executive Service Transfer to general schedule
- ☑ Removal (Termination after completion of probationary or initial service period)
- ☐ Involuntary Resignation
- ☐ Termination during probationary or initial service period
- ☐ Involuntary Retirement
- ☐ Reduction in grade or pay
- ☐ Suspension for more than 14 days
- ☐ Separation, demotion, or furlough for more than 30 days by reduction in force (RIF)
- ☐ Furlough of 30 days or less
- ☐ Denial of within-grade increase
- ☐ Failure to restore/reemploy/reinstate or improper restoration/reemployment/reinstatement
- ☐ Negative suitability determination
- ☐ Other action or decision (describe):

2. Date you received the agency's final decision letter (if any) (month, day, year) (Attach a copy)

03/04/2023

3. Effective date (if any) of the agency action or decision (month, day, year)

03/04/2023

4. Prior to filing this appeal, did you and the agency mutually agree in writing to try to resolve the matter through an alternative dispute resolution (ADR) process?

☐ Yes ☑ No

5. Explain briefly why you think the agency was wrong in taking this action. In challenging such an action, you may choose to allege that the agency engaged in harmful procedural error, committed a prohibited personnel practice, or engaged in one of the other claims listed in Appendix A. Attach the agency's proposal letter, decision letter, and SF-50, if available.

See Continuation Sheet for Response.

MERIT SYSTEMS PROTECTION BOARD

Appeal of Agency Personnel Action or Decision (Non-retirement)

Please type or print legibly.

6. With respect to the agency personnel action or decision you are appealing, have you, or has anyone on your behalf, filed a grievance under a negotiated grievance procedure provided by a collective bargaining agreement?

☐ Yes ☑ No

7. If your answer to question 6 is "Yes," on what date was the grievance filed (month, day, year)?

NOT APPLICABLE

8. If your answer to question 6 was "Yes," has a decision on the grievance been issued?

NOT APPLICABLE

9. Did you file a whistleblowing complaint with the Office of Special Counsel (OSC)?

☐ Yes ☑ No

10. Have you received written notice that the Office of Special Counsel made a decision or terminated its investigation?

NOT APPLICABLE

11. Did you file a complaint on this matter with the Department of Labor (DOL)?

☐ Yes ☑ No

12. Has the Department of Labor notified you that your USERRA or VEOA complaint could not be resolved?

NOT APPLICABLE

Merit Systems Protection Board Form 185-2

Appeal of Agency Personnel Action or Decision (Non-retirement)

Continuation Sheet

5. Explain briefly why you think the agency was wrong in taking this action. In challenging such an action, you may choose to allege that the agency engaged in harmful procedural error, committed a prohibited personnel practice, or engaged in one of the other claims listed in Appendix A. Attach the agency's proposal letter, decision letter, and SF-50, if available.

I was terminated for refusing to test for Covid 19 here is my response to Vietta Williams NGA Director of Human Directorate. Ms. Williams refused to respond to any of the following points given.

1. Testing is discriminatory. Testing only "unvaccinated" is not only unfair it has been widely proven that all three of the vaccines have low efficacy rates and are practically ineffective within six months. Most people started getting "vaccinated" back in February of 2021 which would mean most of the "vaccines" would be ineffective sometime between August and January 2022. Also there have been many "breakthrough" cases which proves that testing less than 10% of the workforce is ineffective, a waste of time and a waste of money.
2. The current presidential administration, and OPM, recommended starting testing on Feb 15, 2022. NGA began testing on Dec 13, 2021. Why was this done? Why the Rush? Was this necessary to try to please someone at a higher level. Moving this date makes no sense and shows that the current NGA administration only wants 100% compliance for the "vaccine".

3. I requested to take sick leave for the time that I was out and I was denied. I requested to take Annual leave during this time and was denied. I requested to telework during this time and was denied. I also requested LWOP and was denied. Why deny people leave if this "pandemic" is so serious? This is an abuse of authority to try to coerce NGA employees to take an experimental "vaccine" against their will.

4. Forced testing and "vaccination" is a violation of the ADA. Any medical examination must be job related, consistent with business necessity, and conducted by a health care professional. Since we should have leave, teleworking and LWOP available the covid testing does not meet the business necessity requirement, and I do not see any way that participating in experimental covid testing is job related. I know the EEOC has approved testing and glossed over the ADA but the ADA was voted on by congress the EEOC are not elected officials and should not be interpreting law without some level of judicial oversight.
5. Covid testing, and "vaccination" has become a political football. I come in every day to work not to be used as pawn for political gain.
6. The omicron variant presented itself in November of 2021. The Omicron variant is a very weak variant that removes a good portion of the "danger" that "vaccination" and covid testing are supposed to prevent. How much longer will this "pandemic" go on? How long will NGA employees have to test for a virus that is no more dangerous than the common cold?
7. CDC guidelines for medium and high levels are to get tested if you have symptoms and to stay up to date with covid "vaccines". These recommendations are not being followed by NGA. Why the contradiction? NGA claims to follow CDC guidelines as a reason for the restrictions? It seems to me that CDC guidelines do not really matter that only compliance to an unenforceable "vaccine" mandate is the only thing that matters.
8. CDC guidelines changed on Aug. 11, they claimed you could no longer discriminate based on vaccination status(because the vaccinated can get the virus and can transmit the virus).

e-Appeal Attachment Transmittal

Appeal Number: **202301252**
Appellant Name: **Chris J. Kroenung**
Agency Name: **Department of Defense**

Please check the box for each document included with this transmittal.

	Name of Attachment	Attachment Processing Status	File Name/Delivery Method
X	SF-50, Notification of Personnel Action	Upload with e-Appeal	NGA Separation Package - Kroenung, Christopher.pdf
X	Agency Proposal Letter	Upload with e-Appeal	NGA REMOVAL LETTER.pdf
X	Agency Decision Letter	Upload with e-Appeal	Term notice documents Mar 4 2023.pdf

2 copies must be submitted of all documents submitted in hardcopy.
Send documents to be submitted in paper form to:
Central Regional Office
230 South Dearborn Street Room 3100
Chicago, Illinois 60604
United States of America

Phone: (312) 353-2923
Fax: (312) 886-4231

Standard Form 50
Rev. 7/91
U.S Office of Personnel Management
FPM Supp. 296-33, Subch. 4

NOTIFICATION OF PERSONNEL ACTION

1. Name (Last, First, Middle)	2. Social Security Number	3. Date of Birth	4. Effective Date
Kroenung,Christopher J	[redacted]	[redacted]	03-04-2023

FIRST ACTION

5-A. Code	5-B. Nature of Action
330	Removal
5-C. Code	**5-D. Legal Authority**
V8J	5 U.S.C. 75 Postappt Eq Adv act-postappt cond
5-E. Code	**5-F. Legal Authority**

SECOND ACTION

6-A. Code	6-B. Nature of Action
6-C. Code	**6-D. Legal Authority**
6-E. Code	**6-F. Legal Authority**

7. FROM: Position Title and Number
Aeronautical Analyst
Job Code: 22AM83 Position: 4067559

16. TO: Position Title and Number

8. Pay Plan	9. Occ Code	10. Grade or Level	11. Step or Rate	12. Total Salary	13. Pay Basis
IA	0000	03	00	$115,905.00	PA

16. Pay Plan	17. Occ. Code	18. Grade or Level	19. Step or Rate	20. Total Salary/Award	21. Pay Basis

12A. Basic Pay	12B. Locality Adj.	12C. Adj. Basic Pay	12D. Other Pay
$97,317.00	$18,588.00	$115,905.00	$0

20A. Basic Pay	20B. Locality Adj.	20C. Adj. Basic Pay	20D. Other Pay

14. Name and Location of Position's Organization
National Geospatial-Intelligence Agency
S - Source Operations & Mgmt Dir
SF - Foundation GEOINT Group
SFA - Aeronautical Nav Ofc
SFAGC - Flight Procedures Branch
St Louis MO USA

22. Name and Location of Position's Organization

EMPLOYEE DATA

23. Veterans Preference
1 None 3 10 Point/Disability 5 10 Point/Other
2 2 - 5-Point 4 - 10-Point/Compensable 6 - 10-Point/Compensable/30%

24. Tenure
1 0 - None 2 - Conditional
1 - Permanent 3 - Indefinite
1

25. Agency Use

26. Veterans Pref for RIF
X YES NO

27. FEGLI
Waived
B0

28. Annuitant Indicator
9 Not Applicable

29. Pay Rate Determinant
0

30. Retirement Plan
K FERS and FICA

31. Service Comp. Date (Leave)
12-25-2003

32. Work Schedule
F Full Time

33. Part-Time Hours Per Biweekly Pay Period

POSITION DATA

34. Position Occupied
1 - Competitive Service 3 - SES General
2 2 Excepted Service 4 SES Career

35. FLSA Category
E - Exempt
E N Nonexempt

36. Appropriation Code

37. Bargaining Unit Status
8888

38. Duty Station Code
297080510

39. Duty Station *(City - County - State or Overseas Location)*
ST LOUIS St Louis MO USA

40. AGENCY DATA	41.	42.	43.	44.
				PAR Number:

45. Remarks

- Health benefits coverage is extended for 31 days during which you are eligible to convert to an individual policy (nongroup contract).
You are also eligible for temporary continuation of your FEHB coverage for up to 18 months.
- Forwarding address [redacted] Ballwin, MO 63021
- Not entitled to severance pay.
- Lump-sum payment to be made for any unused annual leave.
- OPF retained by National Personnel Records Center, 1411 Boulder Blvd, Valmeyer, IL 62295.
- Reason(s) for removal: CUFE - Failure to Follow Procedures.

46. Employing Department or Agency	47. Agency Code	48. Personnel Office ID	49. Approval Date
Department of Defense National Geospatial-Intelligence Agency	DD11	2325	03-06-2023

50. Signature/Authentication and Title of Approving Official
Ryan J. Taylor
Supv HR Specialist (Information Systems)
Processed By: HH

5-Part

2 - OPF Copy - Long Term Record -- DO NOT DESTROY

Editions Prior to 7/91 Are Not Usable After 6/30/93
NSN 7540-01-333-6236

FEHB
Federal Employees Health Benefits Program

Notice of Change in Health Benefits Enrollment

Part A - Identifying Information

1. Name *(Last, first, middle initial)*	2. Date of birth	3. Social security number
Kroenung, Christopher J.	[redacted]	[redacted]
4. Home address *(including ZIP Code)*	**5. Payroll office number**	**6. Enrollment code number**
[redacted] Ballwin, MO 63021	[redacted]	421
	7. SF 2811 Report number	**8. Date this action becomes effective**
		03/11/2023

Only the item that is checked below affects your enrollment. Read that item carefully and follow any pertinent instructions. Keep this form for your records.

Part B - Termination

[X] Your enrollment terminates on the date in Part A, item 8, above. However, your coverage is extended for 31 days after that date.

Important Notice: **You have the right to convert to an individual (nongroup) contract with the carrier of your plan. You also may have the right to temporarily continue your group coverage.** See **Part B - Termination** on the back of this form for information about 31-day extension of coverage, conversion, and temporary continuation of coverage.

If termination is due to death of enrollee enter date of death | Date of death (mo, dy, yr)

Part C - Transfer In

[ ] The new Payroll Office (or Retirement System) shown in Part H below has accepted transfer of this enrollment and will continue it.

Part D - Reinstatement

[ ] Your enrollment has been reinstated effective on the date in Part A, item 8, above.

Part E - Change in Name of Enrollee

[ ] The name under which this enrollment is carried has been changed to:

Name | Date of Birth

Address (including ZIP Code) if different from Part A, item 4, above.

Part F - Change In Enrollment-Survivor Annuitant

[ ] Your enrollment has been changed from family coverage to self only. Your plan will send you a new identification card. Your new enrollment code number is shown below. (Note: This item is completed by Retirement Systems only.)

New Enrollment Code Number

Part G - Remarks

Employee separated from agency on 3/4/2023.

Part H - Date of Notice

Note: Instructions for Employing Offices are on the back of Copy 4 of this form.

Name and address of agency *(including ZIP Code)*	Personnel contact and telephone number
National Geospatial-Intelligence Agency 3838 Vogel Road, Mail Stop L-28 Arnold, Missouri 63010-6238	Hunter C. Higgins (314)676-1732
	Payroll contact and telephone number ( )
Signature of authorized agency official	Date 03/08/2023

Part B - Termination

If Part B on the other side of this form is checked, read the following instructions carefully.

31-Day Extension of Coverage
Your enrollment terminates on the date shown in Part A, item 8, on the front of this form. Coverage under your enrollment continues temporarily for 31 days from the date shown. If you, or any covered member of your family, are a patient in a hospital on the 31st day of this temporary extension, benefits of the plan may continue for the rest of that confinement, but not beyond 60 more days.

Conversion to Nongroup Contract
You may convert your enrollment to a nongroup contract, without evidence of good health. The nongroup contract to which you may convert is one regularly offered by your plan. It may differ from your group plan in benefits, or cost, or both, and you will have to pay the entire cost of the nongroup contract directly to the plan. The nongroup contract is effective on the day after your 31-day extension of coverage ends.

If you are interested in converting to a nongroup contract, write for information to the nearest office of the plan in which you have been enrolled (see the plan's brochure or ask your employing office for the address of the plan's nearest office). The plan will promptly send you an application form and details concerning benefits and rates of the nongroup contract to which you may convert.

Time Limit on Conversion
Normally, to be eligible for conversion, you must send your written request for information to your plan within 31 days after the date shown in Part H. However, if the date shown in Part H is more than 60 days after the date your enrollment terminates (Part A, item 8), you must forward it to your plan within 91 days after the date shown in Part A, item 8.

If you are prevented by causes beyond your control from submitting a timely request for information about conversion to a nongroup contract, you should write to your plan as soon as possible asking approval of a belated conversion opportunity. Explain fully the circumstances that prevented earlier action and attach proof of the loss of group coverage (e.g., Standard Form 50 terminating Federal employment). A plan may consider requests filed within 6 months after group eligibility ends. If your plan needs assistance in processing your request, it should contact OPM.

Temporary Continuation of Coverage
If you are an employee whose enrollment is terminating because you are separating from service (including separation for retirement), you may be eligible to temporarily continue your benefits coverage under the Federal Employees Health Benefits Program after separation. Within 61 days after the date shown in Part A, item 8, on the front of this form, your employing office will formally notify you of your rights regarding temporary continuation of coverage and tell you where you may obtain additional information. You will have 60 days after the later of (1) your date of separation from service, or (2) the date you receive the notice from your employing office in which to elect temporary continuation of coverage.

When your temporary continuation of coverage expires, you will be entitled to the 31-day extension of coverage and the opportunity to convert to a nongroup contract.

Entry on Active Military Duty
If you elected to terminate your enrollment because you are entering military service, you may convert to a nongroup contract even though your family members are entitled to care under the Uniformed Services Health Benefits Program. If you return to civilian duty in the exercise of reemployment rights, your enrollment will be reinstated effective on the day you return to active duty. If you return to civilian duty not in the exercise of reemployment rights, you must, if eligible for coverage, register again the same as a new employee. If you are an annuitant, your enrollment will be reinstated on the day you are separated from military service. You must notify your retirement system of this event by furnishing a copy of your separation papers.

Part C - Transfer of Enrollment

If Part C on the other side of this form is checked, read carefully whichever of the following instructions applies:

Transfer of Employment
Your enrollment has been transferred from your previous agency or payroll office to the agency or payroll office shown in Part H. If you are in a prepaid comprehensive medical plan and you left the area served by the plan, you may be able to change to another plan. For details about your right to change plans, check with your employing office.

Retirement
Your enrollment has been transferred from your employing agency to the retirement system shown in Part H. Your enrollment continues automatically during retirement if you retire on an immediate annuity and you have been enrolled under the Federal Employees Health Benefits Program for the lesser of (1) all your service since your first opportunity to enroll, or (2) the 5 years of service immediately preceding retirement. Your share of the cost of your enrollment will be withheld from your annuity.

Death
The enrollment of the deceased employee named in Part A has been transferred to the retirement system shown in Part H. If the deceased employee or annuitant was enrolled for self and family at the time of death, and if at least one member of the family is entitled to a survivor annuity (or the widow(er) is entitled to the Basic Employee Death Benefits under FERS), coverage for each family member who was covered by the employee's enrollment continues automatically.

If there is only one eligible survivor, the enrollment will be changed from family coverage to self only. The survivor's share of the cost of the enrollment will be deducted from the annuity. Application for Death Benefits (Standard Form 2800 or the equivalent) should be filed promptly to avoid any question about health benefits coverage. When the survivor annuity is approved, another form like this one will be issued to show that the enrollment is being continued in the survivor's name.

Employees' Compensation
Your enrollment has been transferred to the Office of Workers' Compensation Programs. Your enrollment continues automatically while you receive monthly compensation from the Office of Workers' Compensation Programs if the Secretary of Labor has held that you are unable to return to duty and if you have been enrolled under the Federal Employees Health Benefits Program for the lesser of (1) all your service since your first opportunity to enroll, or (2) the 5 years of service immediately preceding the start of your compensation. Enrollment of covered family members of a deceased employee or compensationer also continues automatically while they receive monthly compensation, if (1) the deceased employee or compensationer was enrolled for self and family at the time of death, and (2) at least one of the covered family members is entitled to compensation as a surviving beneficiary under the Federal Employees' Compensation Act. The compensationer's or survivor's share of the cost of the enrollment will be deducted from the compensation checks.

Keep This Form For Your Records

Back, Copy 1
Standard Form 2810
Revised June 1995

CHRIS J. KROENUNG v. DEPARTMENT OF DEFENSE
Docket # CH-0752-23-0234-I-1
Agency File and Narrative Response
Summary Page

Case Title : CHRIS J. KROENUNG v. DEPARTMENT OF DEFENSE

Docket Number : CH-0752-23-0234-I-1

Pleading Title : Agency File and Narrative Response

Filer's Name : Jack W. Rickert

Filer's Pleading Role : Agency Representative

Details about the supporting documentation

N/A

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CHRIS J. KROENUNG v. DEPARTMENT OF DEFENSE
Docket # CH-0752-23-0234-I-1
Agency File and Narrative Response
Online Interview

1. Would you like to enter the text online or upload a file containing the pleading?

See attached pleading text document

---

2. Does your pleading assert facts that you know from your personal knowledge?

Yes

---

3. Do you declare, under penalty of perjury, that the facts stated in this pleading are true and correct?

Yes

TAB 1

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CENTRAL REGIONAL OFFICE

CHRISTOPHER KROENUNG,	}	
Appellant,	}	**DOCKET NUMBER**
	}	**CH-0752-23-0234-I-1**
	}	
v.	}	
	}	
	}	
	}	**DATE: April 11, 2023**
DEPARTMENT OF DEFENSE (NGA)	}	
Agency.	}	
	)	

AGENCY'S FILE

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TAB 4l	COVID-19 DoD Guidance	20 Dec 2021
Tab 4m	Agency Adverse Action Policy	12 Apr 2019

AGENCY NARRATIVE RESPONSE

SUMMARY OF RELEVANT AND MATERIAL FACTS

The Appellant was employed at NGA in the excepted service as a Pay Band 3, Aeronautical Analyst (Tab 4a). The Appellant

was an employee as defined by 5 U.S.C. 7511(a)(1)(B), since he was a preference eligible in the excepted service who completed one year of continuous service in the same or similar position at NGA prior to his involuntary removal for the offense of Conduct Unbecoming a Federal Employee (Tab 4a).

The Appellant is not covered by a collective bargaining agreement (Tab 2). He has not filed a complaint of discrimination over his removal (Tab 3).

THE APPELLANT'S INVOLUNTARY REMOVAL

In accordance with "Force Health Protection Guidance (Supplement 23) Revision 3 -Department of Defense Guidance for Coronavirus Disease 2019 Vaccination Attestation, Screening Testing, and Vaccination Verification, Gilbert R. Cisneros, Jr, 20 December 2021," and "Supplemental Guidance for Implementing Mandatory COVID-19 Vaccination Attestation, Screening Testing, and Vaccination Verification of DoD Civilian Employees for the DoD Fourth Estate -Revision 3, Michael B. Donley, 10 January 2022," all federal employees, to include NGA employees, who are not fully vaccinated for COVID-19 are required to provide documentation of a negative COVID-19 test when reporting to their worksite (Tab 4k, 4l).

On 03 January 2022, the Appellant, who was unvaccinated for COVID-19, reported to his worksite without documentation of a negative COVID-19 test as required by NGA's testing program in

accordance with the DoD Force Health Protection Guidance (Tab 4i). Mr. Paul McLaughlin, Appellant's Division Chief, directed Appellant to get a COVID test and return with proof of the negative test (Tab 4i). The Appellant, however, refused to comply, *Id.* This act of defiance by Appellant evidenced his failure to follow agency policies and procedures, *Id.*

Accordingly, on February 17, 2022, the Agency imposed a written Reprimand on the Appellant for "Conduct Unbecoming a Federal Employee." (Tab 4i). The Letter of Reprimand (LOR) was remedial in nature, *Id.* It stated in relevant part, that "[i]t is my hope that this Letter of Reprimand will serve as a corrective measure, and convey to you the importance of following Agency directives in order to comply with COVID-19 safety and force health protection measures." (Tab 4i).

Notwithstanding this, the LOR informed Appellant that he had seven (7) calendar days from the date of this LOR to comply with the Agency's COVID-19 testing program (Tab 4i). Continued non-compliance after the seven (7) calendar days would result in more severe disciplinary action, up to and including removal from his position and Federal Service, *Id.* The Appellant, however, made no attempt to comply (Tab 4h).

Lastly, the LOR advised Appellant that he could seek a reasonable accommodation based on a sincerely held religious

belief or practice (Tab 4i). There is no evidence that Appellant requested such an accommodation.

As noted above, Appellant failed to abide with the written requirement that he comply with the Agency's COVID-19 testing program within the seven (7) calendar day timeframe specified in his Letter of Reprimand, dated 17 February 2022 (Tab 4h). Subsequently, on 01 March 2022, the Appellant failed to comply with the Agency's COVID-19 testing program, when he notified his supervisor, Justin Nahlik, that he did not plan to come to work that week to avoid the testing requirement (Tab 4h).

Later again, on 07 March 2022, Appellant failed to comply with the Agency's COVID-19 testing program, when he notified his supervisor that he did not plan to come to work that week based on the COVID testing requirement (Tab 4h). Consequently, the Agency proposed that Appellant be suspended without pay for a period of 10 calendar days (Tab 4h). The Appellant was afforded the opportunity to make written and/or oral reply(ies), *Id.* In his written reply, dated 06 June 2022, the Appellant claimed that the government's and NGA's testing requirements were unlawful (Tab 4g). On 08 July 2022, the Agency's Deciding Official, Vietta Williams, the Director of NGA's Human Development Directorate, imposed the 10-day suspension after considering Appellant's written reply (Tab 4f).

Unfortunately, despite this prior progressive discipline, the Appellant continued to refuse to comply with the Agency's COVID-19 testing program by refusing to get tested (Tab 4e). On 08 August 2022, when the CDC Community Level at NGA West (NCW) was HIGH, Appellant failed to comply with the Agency's COVID-19 testing program when he told his supervisor that he was refusing to test, *Id.* The following week on 15 August 2022, again when the CDC Community Level at NCW was MEDIUM, the Appellant failed to comply with the Agency's COVID-19 testing program when he notified his supervisor that he was still refusing to test, *Id.*

Having previously issued Appellant a LOR and a 10-day suspension for the same misconduct, the Agency proposed the Appellant's removal, by memo, dated 24 October 2022, from NGA for Conduct Unbecoming a Federal Employee for his continuing failure on 08 August 2022 and 15 August 2022 respectively to comply with the Agency's COVID-19 testing requirements (Tab 4e). The Appellant was advised of and afforded all of his procedural rights under 5 U.S.C. Section 7513 and Agency policy, *Id.*

On 04 November 2022, the Appellant submitted his written reply, making the same or similar legal arguments that the government's and NGA's COVID-19 testing requirements were unlawful (Tab 4d). The Agency's Deciding Official, Vietta Williams, considered the Appellant's written reply and the relevant Douglas Factors (Tab 4b, 4c). She determined that the

Agency's progressive discipline had been ineffective, *Id.* She further agreed with the Appellant's management that his misconduct required him being barred from entering NGA's facilities, and thus he was unable to perform the mission-essential requirements of his organization and position, and this had an adverse effect on their confidence and trust in Appellant to do the job (Tab 4b, 4c). Furthermore, the Deciding Official agreed that Appellant's absences placed a strain on his organization's mission as others have had to do his job in his stead, *Id.*

On 28 February 2023, the Deciding Official imposed the removal on Appellant, with an effective date of 04 March 2023 (Tab 4b). The Appellant timely filed his appeal to the MSPB on or about 22 March 2023.

BURDEN OF PROOF

The Board may uphold an agency's decision to take adverse action against an employee only if the charge brought against him is supported by preponderant evidence. 5 U.S.C. § 7701(c)(1)(B); 5 C.F.R. § 1201.56(a)(1)(ii). Preponderant evidence is the degree of relevant evidence a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue. 5 C.F.R. § 1201.4(q).

The Agency also has the burden of establishing that its action promotes the efficiency of the service (the nexus requirement). 5 U.S.C. § 7513; *see Hatfield v. Department of the Interior,* 28 M.S.P.R. 673 (1985). Finally, the agency must show that its penalty selection was not so excessive as to be an abuse of discretion and was not otherwise arbitrary or unreasonable. *Douglas v. Veterans Administration,* 5 M.S.P.R. 280, 296-306 (1981). When the agency's charge is sustained, the Board will review the agency-imposed penalty to determine if the agency considered all relevant Douglas factors and exercised management discretion within the tolerable limits of reasonableness.

ANALYSIS

Pursuant to the White House Safer Federal Workforce Task Force directive, to reduce the transmission of COVlD-19, Department of Defense (DoD) civilian employees were required to be fully vaccinated by November 22, 2021, (Tab 4k, 4l). To comply with this directive, the DoD implemented Force Health Protection Guidance that covered coronavirus disease vaccination attestation, screening testing, and vaccination verification, *Id.* This directive applied to all DoD civilian employees, even those engaged in full-time telework or remote work. *Id.*

DoD civilian employees who were not fully vaccinated were required to undergo weekly COVID-19 testing, including those who

received medical or religious exemptions (Tab 4k, 41). The Agency implemented this testing requirement on December 23, 2021, *Id.* In the Program Acknowledgement Statement titled, "Mandatory COVID-19 Screening Testing," the agency explained its authority for testing employees for COVID-19, but noted "While disclosure of the requested information is voluntary, failure to provide such information may impact an individual's eligibility to enter NGA facilities and may further lead to disciplinary action, up to and including removal from Federal service." *Id.*

The Appellant does not dispute that he failed to undergo COVID-19 testing during the weeks of 08 March and 15 March 2022 (Tab 4d). Rather, he asserted various policy and legal challenges regarding the Agency's authority to require him to undergo such a testing procedure, *Id.*

In particular, the Appellant asserted that the Agency's weekly COVID-19 testing requirement violated the Americans with Disabilities Act (ADA), claiming that the Agency failed to show the requisite "business necessity" of the COVID testing requirements (Tab 4d). An agency, however, may require a medical examination of an employee if it is job-related and consistent with business necessity. *29 C.F.R. § 1630.14(c)*. The Agency's COVID-19 testing program for employees who were not fully vaccinated was job-related and consistent with business

necessity. Moreover, it was compliant with the White House Safer Federal Workforce Task Force mandate.

The Appellant produced no persuasive evidence to support any claim that adherence to the Agency's testing instruction would harm him (Tab 4d). Following the White House Safer Federal Workforce Task Force mandate, the DoD, and specifically here the NGA, clearly was within its rights to require employees who elected not to receive COVID-19 vaccinations to undergo weekly testing in the interests of safety and the accomplishment of its mission (Tab 4k, 4l).

Thus, the Agency proved by preponderant evidence the Appellant's failure to comply with required weekly COVID-19 testing during the weeks of 08 August 2022 and 15 August 2022 was Conduct Unbecoming a Federal Employee and that he lacked a legally sufficient excuse for such failure. Accordingly, the Agency submits that the charge and the penalty of removal should be sustained.

CONCLUSION

For the reasons set out above, the Agency submits that the factual basis for Appellant's removal is supported by a preponderance of the evidence and that his removal promotes the efficiency of the service.

Respectfully submitted,

Jack W. Rickert

JACK W. RICKERT
Agency Representative
571-557-2982 Phone
571-558-3312 Fax

CERTIFICATE OF SERVICE

I certify that foregoing Agency File was served upon the following parties, this date, 11 April, 2023 in the manner indicated below:

Appellant

Christopher Kroenung E-File

MSPB Administrative Judge

David R. Lidow, Esq. E-File

By: Jack W. Rickert
JACK W. RICKERT

TAB 2

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CENTRAL REGIONAL OFFICE

CHRISTOPHER KROENUNG,	}	
Appellant,	}	**DOCKET NUMBER**
	}	**CH-0752-23-0234-I-1**
	}	
v.	}	
	}	
	}	
	}	**DATE: April 11, 2023**
DEPARTMENT OF DEFENSE (NGA)	}	
Agency.	}	
	)	

1. I am the Agency's legal counsel in the above-captioned appeal.

2. NGA employees, including Mr. Kroenung, the Appellant, are not in any collective bargaining unit, because of NGA's position in the U.S. Intelligence Community.

3. I have confirmed with the EEO Program Manager that Appellant did not file a formal complaint of discrimination over his removal.

I certify that the following information is true to the best of my knowledge and belief, under the penalty of perjury.

By: Jack W. Rickert
JACK W. RICKERT

TAB 3

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CENTRAL REGIONAL OFFICE

CHRISTOPHER KROENUNG,	}	
Appellant,	}	**DOCKET NUMBER**
	}	**CH-0752-23-0234-I-1**
	}	
v.	}	
	}	
	}	
	}	**DATE: April 11, 2023**
DEPARTMENT OF DEFENSE (NGA)	}	
Agency.	}	
	)	

1. I am the Agency's legal counsel in the above-captioned appeal.

2. NGA employees, including Mr. Kroenung, the Appellant, are not in any collective bargaining unit, because of NGA's position in the U.S. Intelligence Community.

3. I have confirmed with the EEO Program Manager that Appellant did not file a formal complaint of discrimination over his removal.

I certify that the following information is true to the best of my knowledge and belief, under the penalty of perjury.

By: Jack W. Rickert
JACK W. RICKERT

TAB 4(a)

Standard Form 50
Rev. 7/91
U.S Office of Personnel Management
FPM Supp. 296-33, Subch. 4

NOTIFICATION OF PERSONNEL ACTION

1. Name (Last, First, Middle)	2. Social Security Number	3. Date of Birth	4. Effective Date
Kroenung,Christopher J	[redacted]	[redacted]	03-04-2023

FIRST ACTION

5-A. Code	5-B. Nature of Action
330	Removal
5-C. Code	**5-D. Legal Authority**
VBJ	5 U.S.C. 75 Postappt Eq Adv act-postappt cond
5-E. Code	**5-F. Legal Authority**

SECOND ACTION

6-A. Code	6-B. Nature of Action
6-C. Code	**6-D. Legal Authority**
6-E. Code	**6-F. Legal Authority**

7. FROM: Position Title and Number	15. TO: Position Title and Number
Aeronautical Analyst Job Code: 22AM83 Position: 4067559	

8. Pay Plan	9. Occ Code	10. Grade or Level	11. Step or Rate	12. Total Salary	13. Pay Basis
IA	0000	03	00	$115,905.00	PA

16. Pay Plan	17. Occ Code	18. Grade or Level	19. Step or Rate	20. Total Salary/Award	21. Pay Basis

12A. Basic Pay	12B. Locality Adj.	12C. Adj. Basic Pay	12D. Other Pay
$97,317.00	$18,588.00	$115,905.00	$0

20A. Basic Pay	20B. Locality Adj.	20C. Adj. Basic Pay	20D. Other Pay

14. Name and Location of Position's Organization	22. Name and Location of Position's Organization
National Geospatial-Intelligence Agency S - Source Operations & Mgmt Dir SF - Foundation GEOINT Group SFA - Aeronautical Nav Ofc SFAGC - Flight Procedures Branch St Louis MO USA	

EMPLOYEE DATA

23. Veterans Preference	24. Tenure	25. Agency Use	26. Veterans Pref for RIF
2 (1 None, 2 - 5-Point, 3 10 Point/Disability, 4 - 10-Point/Compensable, 5 10 Point/Other, 6 - 10-Point/Compensable/30%)	1 (0 - None, 1 - Permanent, 2 - Conditional, 3 - Indefinite)		X YES ☐ NO

27. FEGLI	28. Annuitant Indicator	29. Pay Rate Determinant
B0 Waived	9 Not Applicable	0

30. Retirement Plan	31. Service Comp. Date (Leave)	32. Work Schedule	33. Part-Time Hours Per Biweekly Pay Period
K FERS and FICA	12-25-2003	F Full Time	

POSITION DATA

34. Position Occupied	35. FLSA Category	36. Appropriation Code	37. Bargaining Unit Status
2 (1 - Competitive Service, 2 Excepted Service, 3 - SES General, 4 SES Career)	E (E - Exempt, N Nonexempt)		8888

38. Duty Station Code	39. Duty Station (City - County - State or Overseas Location)
297080510	ST LOUIS St Louis MO USA

40. AGENCY DATA	41.	42.	43.	44.
				PAR Number:

45. Remarks

- Health benefits coverage is extended for 31 days during which you are eligible to convert to an individual policy (nongroup contract). You are also eligible for temporary continuation of your FEHB coverage for up to 18 months.
- Forwarding address: [redacted] Ballwin, MO 63021
- Not entitled to severance pay.
- Lump-sum payment to be made for any unused annual leave.
- OPF retained by National Personnel Records Center, 1411 Boulder Blvd, Valmeyer, IL 62295.
- Reason(s) for removal: CUFE - Failure to Follow Procedures.

46. Employing Department or Agency	47. Agency Code	48. Personnel Office ID	49. Approval Date
Department of Defense National Geospatial-Intelligence Agency	DD11	2325	03-06-2023

50. Signature/Authentication and Title of Approving Official
Ryan J. Taylor
Supv HR Specialist (Information Systems)
Processed By: HH

5-Part

2 - OPF Copy - Long Term Record -- DO NOT DESTROY

Editions Prior to 7/91 Are Not Usable After 6/30/93
NSN 7540-01-333-6236

TAB 4(b)

National Geospatial-Intelligence Agency
7500 GEOINT Drive, Springfield, Virginia 22150

DATE: 28 February 2023

MEMORANDUM FOR: Christopher J. Kroenung, SFAGC

SUBJECT: Notice of Decision Regarding Proposed Removal

REFERENCES:

a. (U//FOUO) Notice of Proposed Removal, 24 October 2022

b. (U) NGAD 1455, Disciplinary and Adverse Actions, 26 August 2013, Admin. Update 1, 25 February 2015

c. (U) NGAM 1455.1, Disciplinary and Adverse Actions, 19 February 2015, Admin. Update 11, 12 April 2019

d. (U) NGAD 1450, Administrative Grievance System and Adverse Action Appeals Process, 26 August 2013, Admin. Update 2, 15 April 2016

e. (U) NGAM 1450.2, Administrative Grievance System and Adverse Action Appeals Process, 26 August 2013, Admin. Update 2, 1 April 2016

f. (U) Employee Reply to Proposed Removal, Christopher J. Kroenung, 4 November 2022

g. (U//FOUO) Douglas Factor Analysis, Vietta S. Williams

1. (U//FOUO) On 24 October 2022, you received a notice (reference a.) proposing to remove you from your position, Aeronautical Analyst, SFAGC, IA-03, and from Federal Service for the following charge: **Conduct Unbecoming a Federal Employee (6a.)** (2 Specifications). You were afforded an opportunity to reply, both verbally and/or in writing, and to furnish affidavits, documentary evidence or other information in support of your reply. Your written reply (reference f.) was received on 4 November 2022 and was considered.

2. (U) FINDINGS:

(U//FOUO) I have carefully considered the charge included in reference a., the evidence contained in the record as established by the proposing official, as well as your reply.

(U//FOUO) Conduct Unbecoming a Federal Employee

SUBJECT: (U) Notice of Decision Regarding Proposed Removal

(U//FOUO) As it pertains to the charge listed above, I have carefully reviewed all information pertaining to this case and I find that the evidence contained within the record supports this charge. As such, **the charge of Conduct Unbecoming a Federal Employee is sustained.**

3. (U) PENALTY ANALYSIS:

(U//FOUO) I have considered the proposal, including the evidence therein, as well as your reply. I have reviewed the Douglas Factor analysis performed by the proposing official, Ms. Jo-Ellen Adkins. I agree with that analysis and I find that the mitigating factors are insufficient, under these circumstances, to justify a lesser penalty. Therefore, based on the evidence contained in the record and my own, independent analysis of the Douglas Factors, I find the charge included in reference a. is supported and substantiated by a preponderance of evidence. I also find that the penalty is reasonable. Please see the attached Douglas Factor worksheet for a more detailed analysis of relevant factors in this matter. **The effective date of your removal will be 4 March 2023.**

4. (U) If you consider my decision improper, you may appeal this decision under the provisions of reference c. You may file an adverse action appeal no later than 15 calendar days after receipt of this notice. If you elect to file an adverse action appeal, you should contact:

Employee Relations Team
7500 GEOINT Drive,
Attn: HDCTR, Mailstop S12205
Springfield, VA 22150
571-557-8042
SAS@nga.mil

(U) Please note: Any matter already filed with the Equal Employment Opportunity Commission (EEOC) or (if applicable) the Merit Systems Protection Board (MSPB) may not also be filed under the agency's Administrative Grievance/Appeal System.

5. (U//FOUO) According to our personnel records you are a preference eligible veteran and/or a former Defense Mapping Agency (DMA) employee; therefore, you may have the right to appeal this decision to the MSPB should you consider my decision improper. An appeal to the MSPB must be filed either in writing or electronically, setting forth the facts and circumstances on which your appeal is based. A written appeal must be addressed to the appropriate MSPB field office for your regional area. Alternatively, an electronic appeal may be filed on the MSPB website, www.mspb.gov, using an interactive online application that guides you through the process of providing the MSPB with the necessary information. Your appeal may not be filed later than 30 calendar days after the effective date of your removal or 30 days after the date of your receipt of the notice, whichever is later. To ensure that you have the most recent version of the MSPB regulations, MSPB appeal forms, and address of the appropriate regional MSPB office, please view the MSPB website at www.mspb.gov. Additional information pertaining to MSPB appeal procedures may be obtained from the MSPB website.

Pleading Number : 2023013618 Submission date : 2023-04-11 11:38:13 Confirmation Number: 564620953 page 24 of 178

(U) Should you decide to file an appeal with the MSPB, you should notify the board that the agency contact official for the purposes of sending the Acknowledgement Order and copy of the appeal is:

Jack W. Rickert
Assistant General Counsel
Office of General Counsel
National Geospatial-Intelligence Agency
7500 GEOINT Drive
Mail Stop, S71-OGCA
Springfield, VA 22150
Jack.W.Rickert@nga.mil

6. (U) If you believe the reasons for this decision are based in whole or in part on discrimination due to race, national origin, color, sex, religion, age, disability, genetic information or retaliation for prior EEO activity, you may contact an agency EEO counselor for guidance on filing a discrimination complaint within 45 days of the date of this decision. Failure to contact an agency EEO counselor within the 45-day time limitation shall cause the agency to dismiss your claim, absent extraordinary circumstances. Please call 1-866-803-7489 to file a complaint or inquire about the EEO process.

7. (U//FOUO) HD Personnel Actions are separate and distinct from Security Clearance Actions taken by NGA Personnel Security. A copy of this final decision notice will be forwarded to the Personnel Security Adjudication Division (SISP). Please contact Personnel Security at PERSEC@nga.mil, or 571-558-2300, with any questions regarding your security clearance eligibility.

Vietta S. Williams
Director, Human Development

Pleading Number : 2023013618 Submission date : 2023-04-11 11:38:13 Confirmation Number: 564620953 page 25 of 178

TAB 4(c)

Douglas Factor Analysis

Name: Christopher J. Kroenung
Position: Aeronautical Analyst
Pay Band: IA-03
Organization: SFAGC

1. (U) NATURE AND SERIOUSNESS OF THE OFFENSE

PROPOSING OFFICIAL ANALYSIS

(U//FOUO) Charge: Conduct Unbecoming a Federal Employee (2 Specifications)

(U) On or about **8 August 2022**, Mr. Kroenung failed to comply with NGA's COVID-19 screening testing requirement when he notified his supervisor of his refusal to test for this week (CDC Community Level at NCW: High).

(U) On or about **15 August 2022**, Mr. Kroenung failed to comply with NGA's COVID-19 screening testing requirement when he notified his supervisor of his refusal to test for this week (CDC Community Level at NCW: Medium).

Aggravating ☒ **Neutral** ☐ **Mitigating** ☐

Explanation:
(U) Mr. Kroenung has continued to fail to adhere to NGA's required COVID-19 screening testing program, which was implemented in accordance with DoD Force Health Protection (FHP) guidance.

DECIDING OFFICIAL ANALYSIS
(U//FOUO) I have reviewed any and all relevant information contained within the record, to include Mr. Kroenung's written reply, as well as the Proposing Official's analysis of this factor. I concur with this analysis and consider this factor to be aggravating.

2. (U) EMPLOYEE JOB LEVEL AND TYPE OF EMPLOYMENT

PROPOSING OFFICIAL ANALYSIS

- (U//FOUO) Employee's Title and Pay Band: Aeronautical Analyst, IA-03
- (U//FOUO) Is the employee a supervisor? Yes ☐ No ☒
- (U//FOUO) Is this a special trust position? Yes ☒ No ☐

Douglas Factor Analysis

- (U//FOUO) Is public contact required and is misconduct related? Yes ☐ No ☒
- (U//FOUO) Is misconduct directly related to the job? Yes ☒ No ☐

Aggravating ☒ **Neutral ☐** **Mitigating ☐**

Explanation:
(U//FOUO) NGA employees are expected to demonstrate professional behavior at all times, to include following applicable NGA policies and programs. As such, Mr. Kroenung's continued failure to adhere to Agency policies call into question his judgement, reliability, and trustworthiness.

DECIDING OFFICIAL ANALYSIS
(U//FOUO) I have reviewed any and all relevant information contained within the record, to include Mr. Kroenung's written reply, as well as the Proposing Official's analysis of this factor. I concur with this analysis and consider this factor to be aggravating.

3. (U) EMPLOYEE'S PAST DISCIPLINARY RECORD

PROPOSING OFFICIAL ANALYSIS

Offense	Penalty	Date
Conduct Unbecoming a Federal Employee (6a.)	Letter of Reprimand	17 February 2022
Conduct Unbecoming a Federal Employee (6a.)	10-Day Suspension	8 July 2022

Aggravating ☒ **Neutral ☐** **Mitigating ☐**

Explanation:
(U//FOUO) Mr. Kroenung has been issued two (2) formal disciplinary actions as a result of his failure to follow the required COVID-19 screening testing program. Management hoped these actions would serve as corrective measures, and convey to him the importance of following Agency directives in order to comply with COVID-19 safety and force health protection measures. Because Mr. Kroenung's actions still continued, I find this to be an aggravating factor.

DECIDING OFFICIAL ANALYSIS
(U//FOUO) I have reviewed any and all relevant information contained within the record, to include Mr. Kroenung's written reply, as well as the Proposing Official's analysis of this factor. I concur with this analysis and consider this factor to be aggravating.

Douglas Factor Analysis

4. (U) EMPLOYEE'S PAST WORK RECORD

PROPOSING OFFICIAL ANALYSIS

- (U//FOUO) Years of service with NGA: 18 years, 0 months
- (U//FOUO) Years of service with Federal Government: 18 years, 9 months
- (U//FOUO) DCIPS ratings the last three (3) performance cycles:
  - (U//FOUO) Last final rating of record: 3.0
  - (U//FOUO) Prior year final rating of record: 3.7
  - (U//FOUO) Two years prior final rating of record: 3.8
- (U//FOUO) Is performance currently acceptable? Yes ☒ No ☐

Aggravating ☐ **Neutral** ☒ **Mitigating** ☐

Explanation:
(U) Mr. Kroenung has performed at the successful level of performance over the last DCIPS rating cycle. Management has reported that, when Mr. Kroenung is able to accomplish the mission-essential requirements of his position, his current performance remains at the successful level.

DECIDING OFFICIAL ANALYSIS
(U//FOUO) I have reviewed any and all relevant information contained within the record, to include Mr. Kroenung's written reply, as well as the Proposing Official's analysis of this factor. I concur with this analysis and consider this factor to be neutral.

5. (U) EFFECT OF THE OFFENSE ON THE EMPLOYEE'S ABILITY TO PERFORM HIS/HER JOB, AND EFFECT ON THE SUPERVISOR'S CONFIDENCE IN THE EMPLOYEE

PROPOSING OFFICIAL ANALYSIS

- (U//FOUO) The employee's ability to do the job? Yes ☒ No ☐
- (U//FOUO) Your confidence/trust in the employee's ability to do the job? Yes ☒ No ☐
- (U//FOUO) Your confidence/trust in the employee's ability to uphold organizational mission? Yes ☒ No ☐

Douglas Factor Analysis

Aggravating ☒ **Neutral** ☐ **Mitigating** ☐

Explanation:
(U//FOUO) Failure to test pursuant to the COVID-19 testing program necessitates being barred from entering NGA's facilities. Because Mr. Kroenung is subject to the testing program, his refusal prohibited him from entering NGA's facility, and thus he was unable to perform the mission-essential requirements of his organization and position.

(U//FOUO) Mr. Kroenung's management expressed that his failure to follow rules and comply with procedures has had an effect on their confidence and trust in him to do the job. Furthermore, his absences placed a strain on his organization's mission as others have had to do his job in his stead.

DECIDING OFFICIAL ANALYSIS
(U//FOUO) I have reviewed any and all relevant information contained within the record, to include Mr. Kroenung's written reply, as well as the Proposing Official's analysis of this factor. I concur with this analysis and consider this factor to be aggravating.

6. (U) CONSISTENCY OF PENALTY WITH THOSE IMPOSED ON OTHER EMPLOYEES FOR SIMILAR OFFENSE

PROPOSING OFFICIAL ANALYSIS

(U) The penalty is consistent with penalties imposed on other employees for similar offenses, therefore I consider this factor to be neutral.

Aggravating ☐ **Neutral** ☒ **Mitigating** ☐

DECIDING OFFICIAL ANALYSIS
(U//FOUO) I have reviewed any and all relevant information contained within the record, to include Mr. Kroenung's written reply, as well as the Proposing Official's analysis of this factor. I concur with this analysis.

7. (U) CONSISTENCY WITH AGENCY'S TABLE OF PENALTIES

PROPOSING OFFICIAL ANALYSIS

Douglas Factor Analysis

CHARGE

(U//FOUO) The employee is being charged with:	**Conduct Unbecoming a Federal Employee**

☐ This is a 1st offense ☐ This is a 2nd offense ☒ This is a 3rd offense

(U) Table of Penalties recommended penalty (2nd):	**5-Day Suspension to Removal**

Aggravating ☒ **Neutral** ☐ **Mitigating** ☐

Explanation:
(U//FOUO) The penalty is consistent with the Table of Penalties, and, because this is a third offense, I consider this to be an aggravating factor.

DECIDING OFFICIAL ANALYSIS
(U//FOUO) I have reviewed any and all relevant information contained within the record, to include Mr. Kroenung's written reply, as well as the Proposing Official's analysis of this factor. I concur with this analysis and consider this factor to be aggravating.

8. (U) NOTORIETY OF THE OFFENSE OR ITS IMPACT ON THE AGENCY'S REPUTATION

PROPOSING OFFICIAL ANALYSIS

Aggravating ☒ **Neutral** ☐ **Mitigating** ☐

Explanation:
(U//FOUO) The COVID-19 testing program is part of the Agency's larger safety measures to mitigate the impacts of the COVID-19 pandemic, and supports the broader efforts taken by the DoD, IC, and the Federal Government. Tolerance of Mr. Kroenung's behavior in the midst of a global pandemic creates an impression of defiance and disregard for the health and safety of the NGA workforce and the general public, as well as disregard for the properly promulgated regulations and guidance of the Executive Branch, which would likely reflect poorly on the Agency when/if this offense becomes known to the public.

Douglas Factor Analysis

DECIDING OFFICIAL ANALYSIS
(U//FOUO) I have reviewed any and all relevant information contained within the record, to include Mr. Kroenung's written reply, as well as the Proposing Official's analysis of this factor. I concur with this analysis and consider this factor to be aggravating.

9. (U) CLARITY OF NOTICE TO THE EMPLOYEE OF UNACCEPTABLE CONDUCT

PROPOSING OFFICIAL ANALYSIS

Aggravating ☒ **Neutral** ☐ **Mitigating** ☐

Explanation:
(U) Mr. Kroenung was well aware that he was required to comply with NGA's screening testing program. His failure to test was not based on a lack of knowledge but rather based on his refusal to comply.

(U//FOUO) Mr. Kroenung knew that disciplinary action could be a consequence of his behavior, as he has been issued two (2) formal disciplinary actions for his failure to follow these very same COVID-19 screening testing requirements. Thus, his actions present an aggravating factor.

DECIDING OFFICIAL ANALYSIS
(U//FOUO) I have reviewed any and all relevant information contained within the record, to include Mr. Kroenung's written reply, as well as the Proposing Official's analysis of this factor. I concur with this analysis and consider this factor to be aggravating.

10. (U) POTENTIAL FOR EMPLOYEE REHABILITATION

PROPOSING OFFICIAL ANALYSIS

Aggravating ☒ **Neutral** ☐ **Mitigating** ☐

Explanation:
(U//FOUO) Mr. Kroenung's management expressed considerable doubt that Mr. Kroenung would ever comply with NGA's screening testing requirements. Therefore, I find this to be an aggravating factor.

Douglas Factor Analysis

DECIDING OFFICIAL ANALYSIS
(U//FOUO) I have reviewed any and all relevant information contained within the record, to include Mr. Kroenung's written reply, as well as the Proposing Official's analysis of this factor. I concur with this analysis and consider this factor to be aggravating.

11. (U) MITIGATING CIRCUMSTANCES

PROPOSING OFFICIAL ANALYSIS

(U) The employee:

- (U//FOUO) Was under unusual job stress: Yes ☐ No ☒
- (U//FOUO) Was experiencing personal problems: Yes ☐ No ☒
- (U//FOUO) Was provoked: Yes ☒ No ☐
- (U//FOUO) Brought the misconduct to management's attention: Yes ☒ No ☐

Aggravating ☐ **Neutral** ☐ **Mitigating** ☒

Explanation:
(U) Mr. Kroenung's management remains unaware of any unusual job stress or personal problems that may explain his failure to comply. They also stated that Mr. Kroenung was forthcoming about his refusal to test and disagreed with the implementation of the requirement, thus management feels his actions were provoked.

DECIDING OFFICIAL ANALYSIS
(U//FOUO) I have reviewed any and all relevant information contained within the record, to include Mr. Kroenung's written reply, as well as the Proposing Official's analysis of this factor. I concur with this analysis and consider this factor to be mitigating.

12. (U) ADEQUACY OF ALTERNATIVE SANCTIONS TO DETER FUTURE MISCONDUCT

PROPOSING OFFICIAL ANALYSIS

(U) Given Mr. Kroenung's failure to comply with NGA's COVID-19 testing program on multiple occasions, the recency of those offenses, combined with his statements that he will continue to refuse to comply, I believe **no lesser** penalty will deter future misconduct on the part of Mr. Kroenung, therefore I consider this factor to be neutral.

Douglas Factor Analysis

DECIDING OFFICIAL ANALYSIS
(U//FOUO) I have reviewed any and all relevant information contained within the record, to include Mr. Kroenung's written reply, as well as the Proposing Official's analysis of this factor. I concur with this analysis.

DECISION

(U//FOUO) After giving full and impartial consideration to the circumstances surrounding the proposed action, the evidence supporting the proposed action, the employee's reply, and the factors above, I have decided to:

☒ **Sustain the action as proposed**

Additional Comments:
(U//FOUO) I have taken into consideration all relevant aggravating/mitigating factors in order to determine a reasonable penalty. I do not believe any lesser penalty is appropriate and I believe the penalty is warranted to promote the efficiency of the service.

DECIDING OFFICIAL SIGNATURE

(U//FOUO) I, Vietta S. Williams, certify that I have considered all relevant Douglas Factors and available information, to include Mr. Kroenung's written reply in determining the appropriate penalty.

Vietta S. Williams
DECIDING OFFICIAL

February 28, 2023
DATE

TAB 4(d)

Gill Jeffrey -Jeff- C NGA-HDCTR USA CIV

From:	Christopher Kroenung <ckroenung@sbcglobal.net>
Sent:	Friday, November 4, 2022 2:45 PM
To:	Williams Vietta S Ms NGA-HD USA CIV; Special Activities Staff(SAS)
Subject:	[Non-DoD Source] Response to notice of proposed removal
Attachments:	Response to removal Nov 3 2022.docx
Categories:	Jeff

Christopher J. Kroenung

[redacted]

Ballwin, MO 63021
(314) 315-6169

Gill Jeffrey -Jeff- C NGA-HDCTR USA CIV

From: Christopher Kroenung <ckroenung@sbcglobal.net>
Sent: Monday, June 6, 2022 7:30 AM
To: Williams Vietta S Ms NGA-HD USA CIV; Special Activities Staff(SAS); Kroenung Christopher J NGA-SFAGC USA CIV
Subject: [Non-DoD Source] Response to proposed 10-Day Suspension

Categories: Jeff

The following is my response to my proposed ten day suspension.

1. Testing is discriminatory. Testing only "unvaccinated" is not only unfair it has been widely proven that all three of the vaccines have low efficacy rates and are practically ineffective within six months. Most people started getting "vaccinated" back in February of 2021 which would mean a majority of the "vaccines" would be ineffective sometime between August and January 2022. Also there have been many "breakthrough" cases which proves that testing less than 10% of the workforce is ineffective, a waste of time and a waste of money.

2. The current presidential administration, and OPM, recommended starting testing on Feb 15, 2022 . NGA began testing on Dec 13 2021. Why was this done? Why the Rush? Was this necessary to try please someone at a higher level. Moving this date makes no sense and shows that the current NGA administration only wants 100% compliance for the "vaccine".

3. I requested to take sick leave for the time that I was out and I was denied. I requested to take Annual leave during this time and was denied. I requested to telework during this time and was denied. I also requested LWOP and was denied. Why deny people leave if this "pandemic" is so serious? This is an abuse of authority to try to coerce NGA employees to take an experimental "vaccine" against there will

4. All test swabs are tainted with Ethylene Oxide. Ethylene Oxide is a carcinogen as defined by the FDA and the CDC. EO also has an OSHA fact sheet that lists it as chemical that causes cancer. I understand there is only a trace amount in each swab but as far as I have read the tests were never meant to be given weekly only when someone is symptomatic (maybe up to four times per year). No studies have been done to determine the amount of test taken to be dangerous. Is it 10, 20, 50 only time and people getting sick will tell.

5. Forced testing and "vaccination" is a violation of the ADA. Any medical examination must be job related, consistent with business necessity, and conducted by a health care professional. Since we should have leave, teleworking and LWOP available the covid testing does not meet the business necessity requirement, and I do not see any way that participating in experimental covid testing is job related. I know the EEOC has approved testing and glossed over the ADA but the ADA was voted on by congress the EEOC are not elected officials and should not be interpreting law without some level of judicial oversight.

6. Covid testing and "vaccination" has become a political football. I come in every day to work not to be used as pawn for political gain.

7. The omicron variant presented itself in November of 2021. The Omicron variant is a very weak variant that removes a good portion of the "danger" that "vaccination" and covid testing are supposed to prevent. How much longer will this "pandemic" go on? How long will NGA employees have to test for a virus that is no more dangerous than the common cold?

8. CDC guidelines for medium and high levels are to get tested if you have symptoms and to stay up to date with covid "vaccines". These recommendations are not being followed by NGA. Why the contradiction? NGA claims to follow CDC guidelines as a reason for the restrictions? It seems to me that CDC guidelines don't really matter that only compliance to an unenforceable "vaccine" mandate is the only thing that matters.

Christopher J. Kroenung

TAB 4(e)

NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY
7500 GEOINT Drive
Springfield, Virginia 22150-7500

DATE: 24 October 2022

MEMORANDUM FOR: Christopher J. Kroenung, SFAGC

SUBJECT: Notice of Proposed Removal

REFERENCES:

a. (U) NGAD 1455, Disciplinary and Adverse Actions, 26 August 2013, Admin. Update 1, 25 February 2015

b. (U) NGAM 1455.1, Disciplinary and Adverse Actions, 19 February 2015, Admin. Update 11, 12 April 2019

c. (U) CoS Note: NGA Operating Posture – Update 02 March 2022 (Effective Immediately), Ernest B. Markham, 2 March 2022

d. (U) Consolidated Department of Defense Coronavirus Disease Force Health Protection Guidance – Revision 2, 8 August 2022

e. (U) Change in Status – COVID19 Weekly Mask and Testing Guidance, 5 August 2022

f. (U) Change in Status – COVID19 Weekly Mask and Testing Guidance, 12 August 2022

g. (U//FOUO) Letter of Reprimand, Justin M. Nahlik, 17 February 2022

h. (U//FOUO) Notice of Decision Regarding Proposed 10-Day Suspension, Vietta S. Williams, 8 July 2022

i. (U//FOUO) Memorandum for Record, Justin M. Nahlik, 16 August 2022

j. (U//FOUO) Douglas Factor Analysis, Jo-Ellen Adkins

1. (U//FOUO) In accordance with the references and all applicable rules, regulations and statutes, and for the reasons set forth below, I am proposing to **remove you from your position,** Aeronautical Analyst, SFAGC, IA-03, **and from Federal Service** for the following charge: **Conduct Unbecoming a Federal Employee (6a.)** (2 Specifications). You have 10 calendar days from receipt to reply to this notice verbally and/or in writing. A final decision will be issued after your reply is received or after the 10 calendar day limit if a reply is not provided.

2. (U//FOUO) THIS PROPOSAL IS BASED ON THE FOLLOWING CHARGE AND SPECIFICATIONS:

(U//FOUO) **Charge: Conduct Unbecoming a Federal Employee (6a.)**

- (U//FOUO) **Specification #1:** On or about 8 August 2022, when the CDC Community Level at NCW was HIGH, you failed to comply with the agency's COVID-19 testing program when you notified your supervisor that you are refusing to test.

- (U//FOUO) **Specification #2:** On or about 15 August 2022, when the CDC Community Level at NCW was MEDIUM, you failed to comply with the agency's COVID-19 testing program when you notified your supervisor that you are refusing to test.

3. (U) FINDINGS:

(U//FOUO) Conduct Unbecoming a Federal Employee

(U) Pursuant to reference d., all DoD Civilian employees, to include NGA employees, who are not fully vaccinated for COVID-19 are required to provide weekly documentation of a negative COVID-19 test before reporting to their worksite when the CDC COVID-19 Community Level is high or medium in the county or equivalent jurisdiction where the DoD facility is located.

(U//FOUO) Pursuant to references e. and f., the transmissibility level for NCW for the weeks of 8 August 2022 and 15 August 2022 necessitated your compliance with weekly COVID-19 testing. The record indicates that you continued to refuse to testing pursuant to the Agency's COVID-19 testing program during this time.

(U//FOUO) You were issued two (2) formal disciplinary actions for similar misconduct. On or about 17 February 2022, you were issued a Letter of Reprimand (LOR) (reference g.); and on or about 12 July 2022, you were issued a Notice of Decision Regarding Proposed 10-Day Suspension (reference h.). As indicated in both notices, continued non-compliance would result in more severe disciplinary action, up to and including removal from your position and Federal Service.

(U//FOUO) Based upon my review of the evidence, I believe the charge and specifications, as outlined above, are fully supported and sustained by the preponderance of the evidence and warrants this action to promote the efficiency of the service.

(U//FOUO) In determining the proposed penalty, I have taken into consideration several factors, commonly referred to as the Douglas Factors. Please see the attached Douglas Factors worksheet for my analysis of specific and relevant factors in this matter.

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4. (U) YOUR RIGHTS TO REPLY TO THIS PROPOSED ACTION ARE AS FOLLOWS:

a. (U) You have the right to reply to this letter both verbally and/or in writing. You can furnish affidavits, documentary evidence, or other information in support of your reply stating why the reason(s) are inaccurate and why the proposed action should not be effected. Your reply will be fully considered before a decision is made.

b. (U) You are granted 10 calendar days from your receipt of this letter to reply verbally and/or in writing. Requests for additional time will be considered if you submit a written request stating your reasons within the 10 calendar day time limit.

c. (U//FOUO) All written (e-mail is permissible) and/or verbal replies and requests for extensions should be made to the deciding official:

Ms. Vietta S. Williams
Director of Human Development (HD)
7500 GEOINT Drive, Mailstop S45-HD
Springfield, VA 22150
Vietta.S.Williams@nga.mil

d. (U//FOUO) When submitting a written reply, extension request, or request to provide a verbal reply, please include:

Employee Relations Team
7500 GEOINT Drive, Mailstop S12205
Springfield, VA 22150
571-557-8042
SAS@nga.mil

e. (U) You may choose someone to represent you, at your own expense, provided that such representation does not pose a conflict of interest.

f. (U//FOUO) You and/or your representative have the right to review pertinent regulations and the materials relied on to support this proposal. To review the regulations and materials, you must submit a written (e-mail is permissible) request to the Employee Relations Team Lead using the above contact information. For reports generated by the Office of the Inspector General (OIG), you may request a copy from the OIG, 571-557-7500, or at IG@nga.mil. You may also submit a Freedom of Information Act (FOIA) request to the NGA FOIA Requestor Service Center, 571-557-4141, or at FOIANGA@nga.mil.

g. (U) Full consideration will be given to any reply, affidavits, or other evidence that you timely submit before a final decision is made. Whether or not you reply, a written notice of the final decision will be provided to you.

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5. (U) If you believe the reasons for this proposal are based in whole or in part on discrimination due to race, national origin, color, sex, religion, age, disability, genetic information or retaliation for prior EEO activity, you may contact an agency EEO counselor for guidance on filing a discrimination complaint within 45 days of the date of this proposal. Failure to contact an agency EEO counselor within the 45-day time limitation shall cause the agency to dismiss your claim, absent extraordinary circumstances. Please call 1-866-803-7489 to file a complaint or inquire about the EEO process.

6. (U) If you believe your behavior or conduct was adversely affected by a personal or work-related problem, I urge you to contact an Employee Assistance Program (EAP) Counselor at 1-800-346-0110 for help. The EAP provides confidential, professional assistance to employees and their families on a wide range of personal and work-related problems. Use of the EAP referral and assistance services is voluntary, and you may decline EAP assistance without fear of reprisal for such action. The use of EAP services does not, however, protect you from disciplinary action imposed by management for inappropriate behavior or poor performance.

7. The reasonable accommodation process is an ongoing, interactive process to assist a qualified individual to perform the essential functions of their job. For reasonable accommodations based on a sincerely held religious belief or practice, requests should be made to your supervisor. For information on requesting a reasonable accommodation based on a disability, please contact the Reasonable Accommodation team at ReasonableAccomodations@nga.mil. Please note that engagement in the Reasonable Accommodation process does not excuse past misconduct or poor performance and does not protect you from disciplinary action.

8. (U//FOUO) **You will remain in a paid administrative duty status during this 30-day notice period and until a decision is reached in this matter.** If you have any questions concerning this proposed notice or your rights as an NGA employee, you may contact the Employee Relations Team Lead using the above contact information.

Jo-Ellen Adkins
Deputy Director, Human Development

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TAB 4(f)

NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY
7500 GEOINT Drive
Springfield, Virginia 22150-7500

DATE: 8 July 2022

MEMORANDUM FOR: Christopher J. Kroenung, SFAGC

SUBJECT: Notice of Decision Regarding Proposed 10-Day Suspension

REFERENCES:

a. (U//FOUO) Notice of Proposed 10-Day Suspension, 17 May 2022

b. (U) NGAD 1455, Disciplinary and Adverse Actions, 26 August 2013, Admin. Update 1, 25 February 2015

c. (U) NGAM 1455.1, Disciplinary and Adverse Actions, 19 February 2015, Admin. Update 11, 12 April 2019

d. (U) NGAD 1450, Administrative Grievance System and Adverse Action Appeals Process, 26 August 2013, Admin. Update 2, 15 April 2016

e. (U) NGAM 1450.2, Administrative Grievance System and Adverse Action Appeals Process, 26 August 2013, Admin. Update 2, 1 April 2016

f. (U) Employee Reply to Proposed 10-Day Suspension, Christopher J. Kroenung, 6 June 2022

g. (U//FOUO) Douglas Factor Analysis, Vietta S. Williams

1. (U//FOUO) On 17 May 2022, you received a notice (reference a.) proposing to suspend you from duty without pay for a period of 10 calendar days for the following charge: **Conduct Unbecoming a Federal Employee** (3 Specifications). You were afforded an opportunity to reply, both verbally and/or in writing, and to furnish affidavits, documentary evidence or other information in support of your reply. Your written reply (reference f.) was received on 6 June 2022 and was considered.

2. (U) FINDINGS:

(U//FOUO) I have carefully considered the charge included in reference a., the evidence contained in the record as established by the proposing official, as well as your reply.

(U//FOUO) Conduct Unbecoming a Federal Employee

(U//FOUO) As it pertains to the charge listed above, I have carefully reviewed all information pertaining to this case and I find that the evidence contained within the record supports this charge. As such, **the charge of Conduct Unbecoming a Federal Employee is sustained.**

3. (U) PENALTY ANALYSIS:

(U//FOUO) I have considered the proposal, including the evidence therein, as well as your reply. I have reviewed the Douglas Factor analysis performed by the proposing official, Ms. Jo-Ellen Adkins. I agree with that analysis and I find that the mitigating factors are insufficient, under these circumstances, to justify a lesser penalty.

(U//FOUO) Therefore, based on the evidence contained in the record and my own, independent analysis of the Douglas Factors, I find the charge included in reference a. are supported and substantiated by a preponderance of evidence. I also find that the penalty is reasonable. Please see the attached Douglas Factor worksheet for a more detailed analysis of relevant factors in this matter. **The effective dates of your suspension will be 18 July 2022 through 27 July 2022. Your return to duty date will be 28 July 2022.** Please be advised that you will have seven (7) calendar days from the end of your suspension to comply with the Agency's COVID-19 testing program. Continued non-compliance after the seven (7) calendar days will result in more severe disciplinary action, up to and including removal from your position and Federal Service.

4. (U) If you consider my decision improper, you may file a grievance under the provisions of reference c. no later than 15 calendar days after receipt of this Notice of Decision. The Employee Relations Team, at 571-557-8042, can provide you information regarding the administrative grievance procedures. Please note: Any matter already filed with the Equal Employment Opportunity Commission (EEOC) may not also be filed under the agency's Administrative Grievance System.

5. (U) The promotion eligibility criteria (NGA Instruction 1405.8, Promotions; or NGA Instruction 1405.9, Promotion to Senior Ranks) for civilian employees and other government agency personnel permanently assigned to NGA requires that a candidate have no final formal discipline or final adverse action (for cause/non-furlough) initiated in the two (2)-year period preceding the call for nominations. Promotion eligibility for candidates under pending disciplinary or adverse action investigation will be based on guidance contained in NGAI 1405.8 or NGAI 1405.9 (as appropriate). Since this is a formal disciplinary action, you will be ineligible to be promoted through NGA's promotion process for a period of two (2) years. Additionally, this formal disciplinary action may affect your eligibility to receive awards, bonuses, and may disqualify you from consideration for/or participation in Competitive Call and/or a Joint Duty Assignment (JDA).

6. (U) If you believe the reasons for this decision are based in whole or in part on discrimination due to race, national origin, color, sex, religion, age, disability, genetic information or retaliation for prior EEO activity, you may contact an agency EEO counselor for guidance on filing a discrimination complaint within 45 days of the date of this decision. Failure to contact an agency EEO counselor within the 45-day time limitation shall cause the agency to dismiss your claim, absent extraordinary circumstances. Please call 1-866-803-7489 to file a complaint or inquire about the EEO process.

7. (U) If you believe your behavior or conduct was adversely affected by a personal or work-related problem, I urge you to contact an Employee Assistance Program (EAP) Counselor at 1-800-346-0110 for help. The EAP provides confidential, professional assistance to employees and their families on a wide range of personal and work-related problems. Use of the EAP referral and assistance services is voluntary, and you may decline EAP assistance without fear of reprisal for such action. The use of EAP services does not, however, protect you from disciplinary action imposed by management for inappropriate behavior or poor performance.

8. (U) The reasonable accommodation process is an ongoing, interactive process to assist a qualified individual with a disability with a reasonable accommodation that allows the individual to perform the essential job functions. If you believe you may qualify for a reasonable accommodation, please contact the Reasonable Accommodation Program Manager, Mr. Mark M. Jackowski at 571-557-5132 (East) or Reasonable Accommodation Program Specialist, Ms. Jessica J. Davis at 314-676-3704 (West). Accommodation requests seek to ensure that requested accommodations are being provided to an employee who has a disability, related to the impairment that is the basis for the disability determination, necessary for the performance of essential job functions and are reasonable in light of other possible alternatives. Essential functions of a position are the fundamental duties of the job to be performed by the employee. Please note that engagement in the Reasonable Accommodation process does not excuse past misconduct or poor performance and does not protect you from disciplinary action, but may represent a mitigating factor for the Deciding Official to analyze.

9. (U//FOUO) HD Personnel Actions are separate and distinct from Security Clearance Actions taken by NGA Personnel Security. A copy of this final decision notice will be forwarded to the Personnel Security Adjudication Division (SISP). Please contact Personnel Security at PERSEC@nga.mil, or 571-558-2300, with any questions regarding your security clearance eligibility.

10. (U//FOUO) Please acknowledge receipt of this letter by signing below. Your signature does not mean that you agree with this notice and your signature will not forfeit any rights to which you are entitled. Additionally, your failure to sign will not void the contents of this letter.

Vietta S. Williams
Director, Human Development

Employee's Acknowledgement of Receipt:

Christopher J. Kroenung Date

TAB 4(g)

Gill Jeffrey -Jeff- C NGA-HDCTR USA CIV

From: Christopher Kroenung <ckroenung@sbcglobal.net>
Sent: Monday, June 6, 2022 7:30 AM
To: Williams Vietta S Ms NGA-HD USA CIV; Special Activities Staff(SAS); Kroenung Christopher J NGA-SFAGC USA CIV
Subject: [Non-DoD Source] Response to proposed 10-Day Suspension

Categories: Jeff

The following is my response to my proposed ten day suspension.

1. Testing is discriminatory. Testing only "unvaccinated" is not only unfair it has been widely proven that all three of the vaccines have low efficacy rates and are practically ineffective within six months. Most people started getting "vaccinated" back in February of 2021 which would mean a majority of the "vaccines" would be ineffective sometime between August and January 2022. Also there have been many "breakthrough" cases which proves that testing less than 10% of the workforce is ineffective, a waste of time and a waste of money.

2. The current presidential administration, and OPM, recommended starting testing on Feb 15, 2022 . NGA began testing on Dec 13 2021. Why was this done? Why the Rush? Was this necessary to try please someone at a higher level. Moving this date makes no sense and shows that the current NGA administration only wants 100% compliance for the "vaccine".

3. I requested to take sick leave for the time that I was out and I was denied. I requested to take Annual leave during this time and was denied. I requested to telework during this time and was denied. I also requested LWOP and was denied. Why deny people leave if this "pandemic" is so serious? This is an abuse of authority to try to coerce NGA employees to take an experimental "vaccine" against there will

4. All test swabs are tainted with Ethylene Oxide. Ethylene Oxide is a carcinogen as defined by the FDA and the CDC. EO also has an OSHA fact sheet that lists it as chemical that causes cancer. I understand there is only a trace amount in each swab but as far as I have read the tests were never meant to be given weekly only when someone is symptomatic (maybe up to four times per year). No studies have been done to determine the amount of test taken to be dangerous. Is it 10, 20, 50 only time and people getting sick will tell.

5. Forced testing and "vaccination" is a violation of the ADA. Any medical examination must be job related, consistent with business necessity, and conducted by a health care professional. Since we should have leave, teleworking and LWOP available the covid testing does not meet the business necessity requirement, and I do not see any way that participating in experimental covid testing is job related. I know the EEOC has approved testing and glossed over the ADA but the ADA was voted on by congress the EEOC are not elected officials and should not be interpreting law without some level of judicial oversight.

6. Covid testing and "vaccination" has become a political football. I come in every day to work not to be used as pawn for political gain.

7. The omicron variant presented itself in November of 2021. The Omicron variant is a very weak variant that removes a good portion of the "danger" that "vaccination" and covid testing are supposed to prevent. How much longer will this "pandemic" go on? How long will NGA employees have to test for a virus that is no more dangerous than the common cold?

8. CDC guidelines for medium and high levels are to get tested if you have symptoms and to stay up to date with covid "vaccines". These recommendations are not being followed by NGA. Why the contradiction? NGA claims to follow CDC guidelines as a reason for the restrictions? It seems to me that CDC guidelines don't really matter that only compliance to an unenforceable "vaccine" mandate is the only thing that matters.

Christopher J. Kroenung

TAB 4(h)

NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY
7500 GEOINT Drive
Springfield, Virginia 22150-7500

DATE: 17 May 2022

MEMORANDUM FOR: Christopher J. Kroenung, SFAGC

SUBJECT: Notice of Proposed 10-Day Suspension

REFERENCES:

a. (U) NGAD 1455, Disciplinary and Adverse Actions, 26 August 2013, Admin. Update 1, 25 February 2015

b. (U) NGAM 1455.1, Disciplinary and Adverse Actions, 19 February 2015, Admin. Update 11, 12 April 2019

c. (U) NGAD 1450, Administrative Grievance System and Adverse Action Appeals Process, 26 August 2013, Admin. Update 2, 15 April 2016

d. (U) NGAM 1450.2, Administrative Grievance System and Adverse Action Appeals Process, 26 August 2013, Admin. Update 2, 1 April 2016

e. (U) CoS Note: Initial Guidance on EO 14043 Nationwide Injunction, Anjuma G. Karkera, 24 January 2022

f. (U) Force Health Protection Guidance (Supplement 23) Revision 3 - Department of Defense Guidance for Coronavirus Disease 2019 Vaccination Attestation, Screening Testing, and Vaccination Verification, Gilbert R. Cisneros, Jr, 20 December 2021

g. (U) Supplemental Guidance for Implementing Mandatory COVID-I9 Vaccination Attestation, Screening Testing, and Vaccination Verification of DoD Civilian Employees for the DoD Fourth Estate - Revision 3, Michael B. Donley, 10 January 2022

h. (U) CoS Note: NGA Operating Posture – Update 02 March 2022 (Effective Immediately), Ernest B. Markham, 2 March 2022

i. (U//FOUO) Letter of Reprimand, Justin M. Nahlik, 17 February 2022

j. (U//FOUO) Memorandum for Record, Justin M. Nahlik, 10 March 2022

k. (U//FOUO) Douglas Factor Analysis, Jo-Ellen Adkins

1. (U//FOUO) In accordance with the references and all applicable rules, regulations and statutes, and for the reasons set forth below, I am proposing to **suspend you from duty without pay for a period of 10 calendar days** for the following charge: **Conduct Unbecoming a Federal Employee (6a.)** (3 Specifications). You have 10 calendar days from receipt to reply to this notice verbally and/or in writing. A final decision will be issued after your reply is received or after the 10 calendar day limit if a reply is not provided.

2. (U//FOUO) THIS PROPOSAL IS BASED ON THE FOLLOWING CHARGE AND SPECIFICATIONS:

(U//FOUO) **Charge: Conduct Unbecoming a Federal Employee (6a.)**

- (U//FOUO) **Specification #1:** On or about 24 February 2022, you failed to comply with the agency's COVID-19 testing program within the seven (7) calendar day timeframe specified in your Letter of Reprimand (Reference i.), issued on or about 17 February 2022.

- (U//FOUO) **Specification #2:** On or about 1 March 2022, you failed to comply with the agency's COVID-19 testing program when you notified your supervisor that you did not plan to come to work that week based on the testing requirement.

- (U//FOUO) **Specification #3:** On or about 7 March 2022, you failed to comply with the agency's COVID-19 testing program when you notified your supervisor that you did not plan to come to work that week based on the testing requirement for NCW.

3. (U) FINDINGS:

(U//FOUO) Conduct Unbecoming a Federal Employee

(U//FOUO) Pursuant to references f. and g., all federal employees, to include NGA employees, who are not fully vaccinated for COVID-19 were required to provide weekly documentation of a negative COVID-19 test before reporting to their worksite. The record indicates that from 24 February until 2 March, you refused to adhere to the Agency's COVID-19 testing program as then applied.

(U//FOUO) Next, pursuant to reference h. and the applicable guidance stated therein, the requirement to provide such documentation became dependent on the community transmissibility level for county in which the NGA facility resides. The transmissibility level for NCW, from 2 March through 11 March, remained at medium, and therefore necessitated weekly COVID-19 testing. The record further indicates that you continued to refuse to testing pursuant to the Agency's COVID-19 testing program during this time.

(U//FOUO) I believe the charge and specifications, as outlined above, is fully supported and sustained by the evidence and warrants this action to promote the efficiency of the service. It is my hope that this action will serve as a corrective measure, and convey to you the importance of following Agency directives in order to comply with COVID-19 safety and force health protection measures when required.

(U//FOUO) In determining the proposed penalty, I have taken into consideration several factors, commonly referred to as the Douglas Factors. Please see the attached Douglas Factors worksheet for my analysis of specific and relevant factors in this matter.

4. (U) YOUR RIGHTS TO REPLY TO THIS PROPOSED ACTION ARE AS FOLLOWS:

a. (U) You have the right to reply to this letter both verbally and/or in writing. You can furnish affidavits, documentary evidence, or other information in support of your reply stating why the reason(s) are inaccurate and why the proposed action should not be effected. Your reply will be fully considered before a decision is made.

b. (U) You are granted 10 calendar days from your receipt of this letter to reply verbally and/or in writing. Requests for additional time will be considered if you submit a written request stating your reasons within the 10 calendar day time limit.

c. (U//FOUO) All written (e-mail is permissible) and/or verbal replies and requests for extensions should be made to the deciding official:

Ms. Vietta S. Williams
Director of Human Development (HD)
7500 GEOINT Drive, Mailstop S45-HD
Springfield, VA 22150
Vietta.S.Williams@nga.mil

d. (U//FOUO) When submitting a written reply, extension request, or request to provide a verbal reply, please include:

Employee Relations Team
7500 GEOINT Drive, Mailstop S12205
Springfield, VA 22150
571-557-8042
SAS@nga.mil

e. (U) You may choose someone to represent you, at your own expense, provided that such representation does not pose a conflict of interest.

f. (U//FOUO) You and/or your representative have the right to review pertinent regulations and the materials relied on to support this proposal. To review the regulations and materials, you must submit a written (e-mail is permissible) request to the Employee Relations Team Lead using the above contact information. For reports generated by the Office of the Inspector General (OIG), you may request a copy from the OIG, 571-557-7500, or at IG@nga.mil. You may also submit a Freedom of Information Act (FOIA) request to the NGA FOIA Requestor Service Center, 571-557-4141, or at FOIANGA@nga.mil.

g. (U) Full consideration will be given to any reply, affidavits, or other evidence that you timely submit before a final decision is made. Whether or not you reply, a written notice of the final decision will be provided to you.

5. (U) Should a formal disciplinary or adverse action be imposed in this case it may negatively impact your eligibility for promotion. Additionally, it may affect your eligibility to receive awards and may disqualify you from being considered for/or participation in Competitive Call and/or a Joint Duty Assignment (JDA).

6. (U) If you believe the reasons for this proposal are based in whole or in part on discrimination due to race, national origin, color, sex, religion, age, disability, genetic information or retaliation for prior EEO activity, you may contact an agency EEO counselor for guidance on filing a discrimination complaint within 45 days of the date of this proposal. Failure to contact an agency EEO counselor within the 45-day time limitation shall cause the agency to dismiss your claim, absent extraordinary circumstances. Please call 1-866-803-7489 to file a complaint or inquire about the EEO process.

7. (U) If you believe your behavior or conduct was adversely affected by a personal or work-related problem, I urge you to contact an Employee Assistance Program (EAP) Counselor at 1-800-346-0110 for help. The EAP provides confidential, professional assistance to employees and their families on a wide range of personal and work-related problems. Use of the EAP referral and assistance services is voluntary, and you may decline EAP assistance without fear of reprisal for such action. The use of EAP services does not, however, protect you from disciplinary action imposed by management for inappropriate behavior or poor performance.

8. The reasonable accommodation process is an ongoing, interactive process to assist a qualified individual to perform the essential functions of their job. For reasonable accommodations based on a sincerely held religious belief or practice, requests should be made to your supervisor. For information on requesting a reasonable accommodation based on a disability please contact the Reasonable Accommodation team at ReasonableAccomodations@nga.mil. Please note that engagement in the Reasonable Accommodation process does not excuse past misconduct or poor performance and does not protect you from disciplinary action.

9. (U//FOUO) **You will remain in a regular duty status during this notice period.** If you have any questions concerning this proposed notice or your rights as an NGA employee, you may contact the Employee Relations Team at 571-557-8042.

10. (U//FOUO) Please acknowledge receipt of this letter by signing below. Your signature does not mean that you agree with this notice and your signature will not forfeit any rights to which you are entitled. Additionally, your failure to sign will not void the contents of this letter.

Jo Ellen Adkins

Jo-Ellen Adkins
Deputy Director, Human Development

Employee's Acknowledgement of Receipt:

EMPLOYEE REFUSED TO SIGN — 26 MAY 22
Christopher J. Kroenung — Date

TAB 4(i)



NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY
7500 GEOINT Drive
Springfield, Virginia 22150-7500

DATE: 17 February 2022

MEMORANDUM FOR: Christopher J. Kroenung, SFAGC

SUBJECT: Letter of Reprimand

REFERENCES:

a. (U) NGAD 1455, Disciplinary and Adverse Actions, 26 August 2013, Admin. Update 1, 25 February 2015

b. (U) NGAM 1455.1, Disciplinary and Adverse Actions, 19 February 2015, Admin. Update 11, 12 April 2019

c. (U) NGAD 1450, Administrative Grievance System and Adverse Action Appeals Process, 26 August 2013, Admin. Update 2, 15 April 2016

d. (U) NGAM 1450.2, Administrative Grievance System and Adverse Action Appeals Process, 26 August 2013, Admin. Update 2, 1 April 2016

e. (U) CoS Note: Initial Guidance on EO 14043 Nationwide Injunction, 24 January 2022

f. (U) Force Health Protection Guidance (Supplement 23) Revision 3 - Department of Defense Guidance for Coronavirus Disease 2019 Vaccination Attestation, Screening Testing, and Vaccination Verification, Gilbert R. Cisneros, Jr, 20 December 2021

g. (U) Supplemental Guidance for Implementing Mandatory COVID-I9 Vaccination Attestation, Screening Testing, and Vaccination Verification of DoD Civilian Employees for the DoD Fourth Estate - Revision 3, Michael B. Donley, 10 January 2022

h. (U) Memorandum for Record, Justin Nahlik, 11 January 2022

1. (U//FOUO) In accordance with the references and all applicable rules, regulations and statutes, and for the reasons set forth below, I am issuing you this **Letter of Reprimand** for the following charge: **Conduct Unbecoming a Federal Employee (6a.)** (1 Specification).

2. (U//FOUO) THIS LETTER OF REPRIMAND IS BASED ON THE FOLLOWING CHARGE AND SPECIFICATION:

(U//FOUO) **Charge: Conduct Unbecoming a Federal Employee (6a.)**

- (U//FOUO) **Specification:** On or about 3 January 2022, you reported to your worksite without documentation of a negative COVID-19 test as required by NGA's testing program in accordance with the DoD Force Health Protection Guidance (reference f.). When Mr. Paul McLaughlin directed you to get a test and return, you refused, which amounts to your failure to follow agency policies and procedures.

3. (U) FINDINGS:

(U//FOUO) Pursuant to references f. and g., all federal employees, to include NGA employees, who are not fully vaccinated for COVID-19 are required to provide documentation of a negative COVID-19 test when reporting to their worksite. It is my hope that this Letter of Reprimand will serve as a corrective measure, and convey to you the importance of following Agency directives in order to comply with COVID-19 safety and force health protection measures.

(U//FOUO) I believe the charge and specification, as outlined above, is fully supported and sustained by the evidence and warrants this action to promote the efficiency of the service. Please be advised that you will have seven (7) calendar days from the date of this notice to comply with the Agency's COVID-19 testing program. Continued non-compliance after the seven (7) calendar days will result in more severe disciplinary action, up to and including removal from your position and Federal Service.

4. (U) The reasonable accommodation process is an ongoing, interactive process to assist a qualified individual to perform the essential functions of their job. For reasonable accommodations based on a sincerely held religious belief or practice, requests should be made to your supervisor. For information on requesting a reasonable accommodation based on a disability please contact the Reasonable Accommodation team at ReasonableAccomodations@nga.mil. Please note that engagement in the Reasonable Accommodation process does not excuse past misconduct or poor performance and does not protect you from disciplinary action.

5. (U//FOUO) This Letter of Reprimand will remain in your Official Personnel Folder for a period of two (2) years from the date of issuance. This Letter of Reprimand may be counted as a prior offense in determining disciplinary action for any further misconduct on your part. You may review the material relied on to support this action by contacting NGA's Employee Relations Team via email at SAS@nga.mil, or by telephone at 571-557-8042. If you consider this action improper, you may file a grievance under the provisions of references b. no later than 15 calendar days after receipt of this Letter of Reprimand. The Employee Relations Team, at 571-557-8042, can provide you information regarding the administrative grievance procedures. Please note: Any matter already filed with the Equal Employment Opportunity

Commission (EEOC) may not also be filed under the agency's Administrative Grievance System.

6. (U) The promotion eligibility criteria (NGA Instruction 1405.8, Promotions; or NGA Instruction 1405.9, Promotion to Senior Ranks) for civilian employees and other government agency personnel permanently assigned to NGA requires that a candidate have no final formal discipline or final adverse action (for cause/non-furlough) initiated in the two (2)-year period preceding the call for nominations. Promotion eligibility for candidates under pending disciplinary or adverse action investigation will be based on guidance contained in NGAI 1405.8 or NGAI 1405.9 (as appropriate). Since this is a formal disciplinary action, you will be ineligible to be promoted through NGA's promotion process for a period of two (2) years. Additionally, this formal disciplinary action may affect your eligibility to receive awards, bonuses, and may disqualify you from consideration for/or participation in Competitive Call and/or a Joint Duty Assignment (JDA).

7. (U//FOUO) HD Personnel Actions are separate and distinct from Security Clearance Actions taken by NGA Personnel Security. A copy of this memorandum will be forwarded to the Personnel Security Division (SISP) for review. Should you have questions about your security clearance eligibility, please contact Personnel Security at PERSEC@nga.mil; or 571-558-2300.

8. (U) If you believe the reasons for this decision are based in whole or in part on discrimination due to race, national origin, color, sex, religion, age, disability, genetic information or retaliation for prior EEO activity, you may contact an agency EEO counselor for guidance on filing a discrimination complaint within 45 days of the date of this decision. Please call 1-866-803-7489 to file a complaint or inquire about the EEO process. Failure to contact an agency EEO counselor within the 45 day timeframe may result in your claim(s) being dismissed.

9. (U) If you believe your behavior or conduct was adversely affected by a personal or work-related problem, I urge you to contact an Employee Assistance Program (EAP) Counselor at 1-800-346-0110 for help. The EAP provides confidential, professional assistance to employees and their families on a wide range of personal and work-related problems. Use of the EAP referral and assistance services is voluntary, and you may decline EAP assistance without fear of reprisal for such action. The use of EAP services does not, however, protect you from disciplinary action imposed by management for inappropriate behavior or poor performance.

10. (U//FOUO) Please acknowledge receipt of this letter by signing below. Your signature does not mean that you agree with this notice and your signature will not forfeit any rights to which you are entitled. Additionally, your failure to sign will not void the contents of this letter.

NAHLIK.JUSTIN.MATHEW.1383368894 Digitally signed by NAHLIK.JUSTIN.MATHEW.1383368894 Date: 2022.02.17 12:51:06 -06'00'

Justin Nahlik
Branch Chief, SFAGC

Employee's Acknowledgement of Receipt:

Employee declined to sign JN

Christopher J. Kroenung Date

TAB 4(j)

NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY
7500 GEOINT Drive
Springfield, Virginia 22150

11 Jan 2022

Failure to follow instructions/refusal to get COVID tested (MR. CHRISTOPHER KROENUNG)

Mr. Kroenung showed up for work at around 1130 on 3 Jan 22. He was sent to Paul McLaughlin's office the Deputy Division Chief since I was out sick that day. Paul asked if he had a negative COVID test since he is not vaccinated and has not submitted an RA. He responded NO and that he didn't plan to get one. Paul directed him to return home and that he was not allowed in NGA facility without a written negative COVID test. Per mission, employees are not able to 100% telework because to telework in SFAGC you have to at some point come into the office to obtain data and enter data/complete production within our classified system. In spite of numerous conversations with myself, informing Mr. Kroenung that testing for unvaccinated personnel is a requirement, he has refused, thus stating he feels the mandate for testing of unvaccinated personnel is an illegal order. He has previously mentioned to me that he did not plan to get COVID tested because he thinks it's an illegal order.

Mr. Kroenung has been provided with the contact information to request a reasonable accommodation. Thus, it is my request that we pursue disciplinary action.

Background: Mr. Kroenung was out sick the week of 13-17 Dec and was on annual leave 20-30 Dec.

Justin Nahlik
Branch Chief SFAGC
National Geospatial-Intelligence Agency

TAB 4(k)

DIRECTOR OF ADMINISTRATION AND MANAGEMENT
1950 DEFENSE PENTAGON
WASHINGTON, DC 20301-1950

10 JAN 2022

MEMORANDUM FOR SENIOR PENTAGON LEADERSHIP
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Supplemental Guidance for Implementing Mandatory COVID-19 Vaccination Attestation, Screening Testing, and Vaccination Verification of DoD Civilian Employees for the DoD Fourth Estate - Revision 3

On December 20, 2021, the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) issued "Force Health Protection Guidance (Supplement 23), Revision 3 - Department of Defense Guidance for Coronavirus Disease 2019 Vaccination Attestation, Screening Testing, and Vaccination Verification," ("FHP-23, Rev. 3") (Attachment 1). This memorandum provides supplemental guidance concerning DoD civilian employees for Fourth Estate Components, including the Office of the Secretary of Defense, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, Defense Agencies, and DoD Field Activities (hereafter referred to as the Fourth Estate). Director, Administration and Management memorandum, "Supplemental Guidance for Implementing Mandatory COVID-19 Vaccination Attestation, Screening Testing, and Vaccination Verification of DoD Civilian Employees for the DoD Fourth Estate - Revision 2," November 8, 2021, is hereby rescinded.

In accordance with FHP-23, Rev. 3, DoD civilian employees in the Fourth Estate are required to be fully vaccinated, subject to exemptions required by law; to complete DD Form 3175 "Civilian Employee Certification of Vaccination;" and, as applicable, provide proof of vaccination. Supervisors are responsible to know their employees' vaccination status and, for not fully vaccinated employees, to enforce applicable force health protection measures, to include masking, physical distancing, and COVID-19 screening testing. Additional guidance on implementing screening testing programs in the Fourth Estate is in Attachment 2 of this memorandum.

In accordance with FHP-23, Rev. 3, Fourth Estate Components will establish procedures to process vaccination exemption requests. Additional guidance on implementing exemption review processes in the Fourth Estate is in Attachment 3 of this memorandum.

My points of contact are Mr. Thomas M. Muir, who may be reached at (703) 692-7138 or thomas.m.muir.civ@mail.mil or Dr. Curt M. Masiello, who may be reached at (571) 372-6955 or curtis.m.masiello.civ@mail.mil.

Michael B. Donley

Michael B. Donley

Attachments:
As stated

TAB 1

UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

PERSONNEL AND
READINESS

DEC 2 0 2021

MEMORANDUM FOR SENIOR PENTAGON LEADERSHIP
COMMANDERS OF THE COMBATANT COMMANDS
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Force Health Protection Guidance (Supplement 23) Revision 3 – Department of Defense Guidance for Coronavirus Disease 2019 Vaccination Attestation, Screening Testing, and Vaccination Verification

This memorandum rescinds and replaces reference (a),[1] and provides updated guidance for implementing additional force health protection and workplace safety measures directed by the White House Safer Federal Workforce Task Force (reference (b)) to reduce the transmission of the virus that causes coronavirus disease 2019 (COVID-19).

In accordance with references (b), (c), and (d), DoD civilian employees were required to be fully vaccinated by November 22, 2021, subject to exemptions as required by law. For purposes of this guidance, "DoD civilian employee" includes foreign nationals employed by DoD outside the United States to the maximum extent possible while respecting host nation agreements and laws. It also includes DoD civilian employees who are engaged in full-time telework or remote work. Additional information about the requirements for DoD civilian employees can be found in Attachment 1.

DoD contractor personnel and official visitors must attest to being fully vaccinated and, if not fully vaccinated, present the results of a recent negative COVID-19 test as a condition of physical access to DoD buildings and DoD-leased spaces in non-DoD buildings in which official DoD business takes place (referred to jointly in this memorandum as "DoD facilities"). For purposes of this physical access requirement, "contractor personnel" are those individuals issued a credential by DoD that affords the individual recurring access to DoD facilities, classified herein as "credentialed recurring access" (CRA) (e.g., Common Access Cardholders). "Official visitors" are non-DoD individuals seeking access, one time or recurring, in association with the performance of official DoD business (e.g., to attend a meeting), but who do not have CRA. The COVID-19 vaccination status for all individuals with CRA and official visitors will be determined in accordance with Attachment 2.

These vaccination and physical access requirements do not apply to personnel receiving ad hoc access to DoD facilities (e.g., delivery personnel, taxi services); to individuals who have access to the grounds of, but not the buildings on, DoD installations (e.g., contract groundskeepers, fuel delivery personnel, household goods transportation personnel); to personnel accessing DoD buildings unrelated to the performance of DoD business (e.g., residential housing); or to personnel accessing DoD facilities to receive a public benefit (e.g., commissary;

[1] References are listed in Attachment 10.

exchange; public museum; air show; military medical treatment facility; Morale, Welfare, and Recreation resources).

In accordance with reference (e), Service members (members of the Armed Forces under DoD authority on active duty or in the Ready Reserve, including members of the National Guard) are required to be fully vaccinated against COVID-19. Service members' vaccination status will be validated utilizing their Military Service-specific Individual Medical Readiness (IMR) system. If a Service member has been vaccinated against COVID-19 outside the Military Health System, that Service member must show official proof of his or her COVID-19 vaccination status to update the IMR system. Once the applicable mandatory vaccination date has passed, COVID-19 screening testing as described in Attachment 7 is required at least weekly for Service members entering a DoD facility who are not fully vaccinated, including those who have an exemption request under review, or who are exempted from COVID-19 vaccination. Service members who are not on active duty and who also are DoD civilian employees or DoD contractor personnel must follow the applicable requirements in this memorandum for DoD civilian employees or DoD contractor personnel, as the case may be. Service members not on active duty must comply with any other applicable DoD or DoD Component guidance. Service members who are actively participating in COVID-19 vaccine clinical trials begun prior to November 22, 2021 are exempted from mandatory vaccination against COVID-19 until the trial is complete in order to avoid invalidating such clinical trial results.

Individuals are considered fully vaccinated 2 weeks after completing the second dose of a two-dose COVID-19 vaccine or 2 weeks after receiving a single dose of a one-dose COVID-19 vaccine. Individuals must be vaccinated with vaccines that are either fully licensed or authorized for emergency use by the Food and Drug Administration (FDA) (e.g., Pfizer-BioNTech/COMIRNATY, Moderna, Johnson & Johnson/Janssen vaccines); listed for emergency use on the World Health Organization Emergency Use Listing (e.g., AstraZeneca/Oxford); or approved for use in a clinical vaccine trial for which vaccine efficacy has been independently confirmed (e.g., Novavax). Those with previous COVID-19 infection(s) or antibody test results are not considered fully vaccinated on that basis for the purposes of this memorandum.

All medical and other information collected from individuals will be maintained in a manner meeting the privacy requirements in Attachment 9.

The Secretaries of Military Departments and the Director of Administration and Management for all other DoD Components will publish any necessary supplemental instructions and ensure that all contract and associated funding implications are considered.

DoD Components should engage with DoD civilian employee unions as they develop supplemental guidance and otherwise satisfy any applicable collective bargaining obligations under the law at the earliest convenience, including on a post-implementation basis.

This memorandum and other COVID-19 guidance memoranda are centrally located at: **https://www.defense.gov/Spotlights/Coronavirus-DOD-Response/Latest-DOD-Guidance/.**

Pleading Number : 2023013618 Submission date : 2023-04-11 11:38:13 Confirmation Number: 564620953 page 70 of 178

Please direct any questions or comments to the following email address: dha.ncr.ha-support.list.policy-hrpo-kmc-owners@mail.mil.

Gilbert R. Cisneros, Jr.

Attachments:

1. ATTACHMENT 1: Vaccination Requirements for DoD Civilian Employees
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ATTACHMENT 1
Vaccination Requirements for DoD Civilian Employees

1. Vaccination Requirement

a. DoD civilian employees are required to be fully vaccinated, unless they have received a temporary or permanent exemption. DoD civilian employees who are actively participating in COVID-19 vaccine clinical trials begun prior to November 22, 2021, are exempted from mandatory vaccination against COVID-19 until the trial is complete in order to avoid invalidating such clinical trial results.

b. DoD civilian employees who are not fully vaccinated must comply with all DoD requirements for individuals who are not fully vaccinated, including those requirements related to masking, physical distancing, and travel. Weekly COVID-19 testing is required for those DoD civilian employees who are not fully vaccinated, including those who have medical or religious exemptions. DoD civilian employees who telework or work remotely on a full-time basis are not subject to weekly testing, but must provide a negative result from a test performed within the prior 72 hours for entry into a DoD facility.

c. DoD civilian employees are eligible to receive the COVID-19 vaccine at any DoD vaccination site, including military medical treatment facilities. They may also opt to receive the COVID-19 vaccine at locations other than DoD vaccination sites, such as retail stores, private medical practices, and/or local and State public health department sites.

d. New DoD civilian employees must be fully vaccinated by their entry on duty (start) date.

   i. The DoD or Office of the Secretary of Defense (OSD) Component head concerned may approve temporary exemptions in writing for up to 60 days after a DoD civilian employee's start date for urgent, mission-critical hiring needs in circumstances in which a DoD civilian employee could not have been fully vaccinated between the time the job opportunity announcement closes and the DoD civilian employee's start date. This authority may be delegated in writing to the DoD or OSD Component head's Principal Deputy (or equivalent) but no lower.
   ii. DoD Components must address the COVID-19 vaccination requirement in job opportunity announcements and tentative and final offer letters. For hiring actions currently underway, DoD Components must issue revised tentative and final offer letters. Sample language can be found in reference (f).

e. DoD civilian employees are authorized official duty time to receive vaccination doses. For DoD civilian employees who are unable to receive a COVID-19 vaccination within their duty hours, regular overtime rules are applicable.

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f. DoD civilian employees are authorized administrative leave for purposes of taking a family member to get a vaccination and for themselves to recover from vaccination. DoD civilian employees who experience an adverse reaction to a COVID-19 vaccination should be granted no more than two workdays of administrative leave for recovery associated with a single COVID-19 vaccination dose. DoD civilian employees should use the time and attendance code for "physical fitness" to record administrative leave for COVID-19 vaccination recovery time that prevents the employee from working or for taking a family member to be vaccinated for COVID-19. The type hour code is "LN" and the environmental/hazard/other code is "PF". Non-appropriated fund employers should code administrative leave related to COVID-19 in a way that can be easily reported.

2. Verification of Vaccination

a. DoD civilian employees who have received a dose of a one-dose vaccine, or both doses of a two-dose vaccine, must provide proof of vaccination to their direct supervisor. For purposes of the vaccination data submission and verification requirements, "direct supervisor" includes an authorized human resources official.

b. Proof of vaccination may be submitted either in hard copy or in an electronic format. The proof may be a photocopy or photograph of the vaccination record, if it legibly displays the data points to be verified by the supervisor. DoD civilian employees who are not fully vaccinated must provide proof of vaccination to their supervisor upon receipt of each required dose. Acceptable proof includes:

i. A copy of the record of immunization from a health care provider or pharmacy;
ii. A copy of the COVID-19 Vaccination Record Card (CDC Form MLS-319813_r, published on September 3, 2020);
iii. A copy of medical records documenting the vaccination;
iv. A copy of immunization records from a public health or State immunization information system; or
v. A copy of any other official documentation containing the data points required to be verified by the supervisor.

c. In addition to providing proof of vaccination to their supervisors, DoD civilian employees also will complete Section A of DD Form 3175 (Attachment 3). DoD civilian employees with access to milConnect (**https://milconnect.dmdc.osd.mil/**) will complete the DD Form 3175 via milConnect; otherwise use of a hard copy[2] is acceptable. DoD civilian employees who complete the DD Form 3175 via milConnect do not need to email or otherwise transmit a copy of the form to their supervisors. DoD civilian employees using a hard copy will provide the hard copy to their supervisor. DoD civilian employees are required to complete the DD Form 3175 even if they already completed the DD Form 3150 (Attachment 4).

[2] **https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd3175.pdf**

d. Upon receiving proof of vaccination, a DoD civilian employee's supervisor will verify that the proof of vaccination provided contains the following data points:

   i. Type of vaccine administered;
   ii. Number of doses received;
   iii. Date(s) of administration; and
   iv. Name of the health care professional(s) or clinic site(s) administering the vaccine(s).

e. In addition to verifying that a DoD civilian employee's proof of vaccination includes the required data points, supervisors also will complete Section B of DD Form 3175. Supervisors with access to milConnect (**https://milconnect.dmdc.osd.mil/**) will complete the DD Form 3175 via milConnect using the DoD civilian employee's Employee Identification Number; otherwise use of a hard copy is acceptable.

f. Supervisors will retain DoD civilian employees' proof of vaccination and DD Form 3175 (for those DoD civilian employees not using milConnect) in accordance with their DoD Component's recordkeeping requirements for DoD civilian employee medical records and the privacy requirements contained in Attachment 9. Supervisors should not ask for copies of the DD Form 3175 from those employees who used milConnect to complete the form. Supervisors who receive completed copies of the DD Form 3175 from DoD civilian employees who completed the DD Form 3175 using milConnect shall destroy the copy or return it to the employee.

g. DoD civilian employees may not be required to use their own personal equipment for the purpose of submitting proof of vaccination or DD Form 3175. DoD civilian employees who submit proof of vaccination or the DD Form 3175 in an electronic format are encouraged to use encrypted email or password protected files with DoD SAFE file transfer (https://safe.apps.mil/).

3. Enforcement of DoD Civilian Employee COVID-19 Vaccination Requirement:

a. DoD civilian employees who refuse to be vaccinated, or to provide proof of vaccination, are subject to disciplinary measures, up to and including removal from Federal service, unless the DoD civilian employee has received an exemption or the DoD civilian employee's request for an exemption is pending a decision. DoD Components should generally follow the recommended guidelines in reference (g), subject to any applicable Component policy and collective bargaining agreements.

b. Progressive enforcement actions include, but are not limited, to:

   i. A 5 calendar-day period of counseling and education;
   ii. A short suspension without pay, generally 14 calendar days or less, with an appropriate notice period. Senior Executive Service members may only be suspended for more than 14 calendar days;
   iii. Removal from Federal service for failing to follow a direct order.

c. During the notice periods preceding adverse employment actions, DoD civilian employees generally should not be placed on administrative leave. DoD Components should require DoD civilian employees to continue to telework or report to the worksite and follow all mitigation measures applicable to not fully vaccinated DoD civilian employees when reporting to the worksite.

d. DoD Components will designate officials, at the appropriate organizational level, to handle the disciplinary process to promote consistent application of disciplinary measures. Such officials will decide each case with due regard to the facts and circumstances of that case.

e. Supervisors should contact their servicing human resources and legal offices to discuss options available to address individual situations regarding enforcement of this requirement.

f. For employees who have not yet attested to vaccination status; are not vaccinated and did not submit an exemption request, or have not begun vaccination following denial of an exemption request, Components are generally encouraged to continue with robust education and counseling efforts as the first step in an enforcement process, with no subsequent enforcement actions beyond that education and counseling and, if warranted, a letter of reprimand, until the new calendar year begins in January 2022.

g. DoD Components are encouraged to identify an occupational health office, medical office, or other resource with which a DoD civilian employee may consult during the period of counseling and education.

4. Exemptions to DoD Civilian Employee COVID-19 Vaccination Requirement:

a. Exemption Requests and Decision-Making Procedures. DoD civilian employees may request an exemption on the basis of a medical condition or circumstance or a sincerely held religious belief, practice or observance. Because all DoD civilian employees must now be vaccinated against COVID-19 as a condition of employment, exemptions will be granted in limited circumstances and only where legally required. The Secretaries of the Military Departments and the Director of Administration and Management for all other DoD Components will oversee Component implementation of the following decision-making procedures.

b. Personnel.

i. Decision Authorities. Management official(s) will be designated to serve as Decision Authorities to make decisions concerning requests for exemption from the COVID-19 vaccination requirement, in consultation with the organization's servicing legal office. Decision Authorities will be at an appropriate level within the organization to consider the impact, if any, that granting a request will have on the DoD Component operations and to promote similar cases being handled in a consistent manner, with due regard

for the facts and circumstances of each case. Each employee's request must be considered on its own merits.

ii. Subject Matter Experts. DoD Components may identify subject matter experts in areas such as human resources (HR), equal employment opportunity (EEO), medicine, and religious matters to serve as advisors to assist Decision Authorities. Such advisors may provide individual advice, as needed by the Decision Authority, but may not be used to develop a group or consensus recommendation or decision.

iii. Administrative Support. DoD Components will provide appropriate personnel and other resources to administratively support the Decision Authorities, including support necessary to assist the Decision Authorities with preparing written products.

c. Employee Notice. DoD Components will inform DoD civilian employees how to make a request for an exemption and notify them that requests must have been submitted no later than November 8, 2021, absent extenuating circumstances, to be considered timely. A DoD civilian employee's failure to submit a timely request for exemption is not a basis to deny a request but may be relevant in evaluating the request.

d. Employee Responsibilities. To make a request for exemption from the COVID-19 vaccination requirement, DoD civilian employees must submit a request to their direct supervisor. For purposes of submitting this exemption request, "direct supervisor" includes an authorized human resources official. The employee must provide an official statement which describes the medical or religious reason the employee objects to vaccination against COVID-19. Generally, such requests must be in writing. DoD civilian employees may use DD Form 3176 (Attachment 5) or DD Form 3177 (Attachment 6) to submit their requests. DoD civilian employees who make oral requests may be provided a sample written request format and/or be interviewed to develop the basis for the request. While the use of the DD Form 3176 and DD Form 3177 is optional for DoD civilian employees, when DoD civilian employees make a request, they must provide the following information:

i. Medical Exemption Requests.

- A description of the medical condition or circumstance that is the basis for the request for a medical exemption from the COVID-19 vaccination requirement;
- An explanation of why the medical condition or circumstance prevents the employee from being safely vaccinated against COVID-19;
- If it is a temporary medical condition or circumstance, a statement concerning when it will no longer be a medical necessity to delay vaccination against COVID-19; and
- Any additional information, to include medical documentation that addresses the employee's particular medical condition or circumstance, which may be helpful in resolving the employee's request for a medical exemption from the COVID-19 vaccination requirement.

ii. Religious Exemption Requests.

- A description of the religious belief, practice, or observance that is the basis for the request for a religious exemption from the COVID-19 vaccination requirement;
- A description of when and how the DoD civilian employee came to hold the religious belief or observe the religious practice;
- A description of how the DoD civilian employee has demonstrated the religious belief or observed the religious practice in the past;
- An explanation of how the COVID-19 vaccine conflicts with the religious belief, practice, or observance;
- A statement concerning whether the DoD civilian employee has previously raised an objection to a vaccination, medical treatment, or medicine based on a religious belief or practice. If so, a description of the circumstances, timing, and resolution of the matter; and
- Any additional information that may be helpful in resolving the DoD civilian employee's request for a religious exemption from the COVID-19 vaccination requirement.

e. Supervisor Responsibilities.

i. Following receipt of an employee's request for exemption, supervisors must update Section B of the employee's DD Form 3175 to indicate that a request for exemption determination is pending.

ii. As necessary, supervisors will engage with the employee to ensure completeness of the employee's exemption request.

iii. In coordination with human resources officials, supervisors will prepare an exemption request package that contains factual information about the circumstances of the employee's request. A complete exemption request package will include the basis for the employee's request and any supporting documentation submitted by the employee, a description of the nature of the employee's job responsibilities and work environment, and any circumstances relevant to a management-level assessment of the reasonably foreseeable effects on the agency's operations, including protecting the agency's workforce and members of the public with whom the employee interacts in the workplace from COVID-19, if the employee remains unvaccinated.

iv. Supervisors will forward the exemption request package to the Decision Authority Support Office.

f. Decision Authority Support Office.

i. DoD Components will establish Decision Authority Support Offices to support exemption request Decision Authorities.

ii. The Decision Authority Support Office will intake exemption request packages and, under the supervision of the Decision Authority, provide administrative support to the Decision Authority.

iii. At the request of the Decision Authority, the Decision Authority Support

Office may coordinate with subject matter experts to obtain written documentation which includes relevant factual information and, as necessary, a professional opinion related to the factual information, for inclusion in the exemption request package.

iv. The Decision Authority Support Office may not provide a consensus opinion or recommendation to the Decision Authority.

g. Decision Authority Determination.

i. The Decision Authority first analyzes the exemption request package. As necessary, the Decision Authority may request additional information and consult with subject matter experts.

ii. After conducting a review of the exemption request, the Decision Authority makes a determination, prepares a written statement that includes the reasons for the determination (which may involve drafting assistance based on the Decision Authority's instructions regarding its contents), and obtains a legal review of the determination.

iii. In cases where the exemption is temporary or denied, the Decision Authority's determination must specify a date by which the DoD civilian employee must be fully vaccinated against COVID-19. In specifying that date, DoD civilian employees must be given a minimum period of 14 days to receive their first (or only) dose of a COVID-19 vaccine.

h. Employee Notification of Determination. The Decision Authority Support Office will transmit the Decision Authority's written determination to the DoD civilian employee's supervisor, who, in turn, provides the DoD civilian employee with a copy of the written determination, updates the DD Form 3175, and informs the DoD civilian employee of next steps.

i. A chart illustrating the exemption request process is below.

Position	Role/Responsibility	Output	Submit to
Requesting employee	Attest to vaccination status via DD Form 3175 to indicate exemption pending.	Completed DD Form 3175.	Supervisor
Requesting employee	Request exemption.	Completed DD Form 3176 (medical) or DD Form 3177 (religious), as appropriate, or other request that contains the information required by FHP 23, Revision 3.	Supervisor

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Supervisor, in consultation with HR officials	Provide relevant information concerning employee's occupation and work environment, to include: availability of measures to physically distance requestor from co-workers and members of the public, the volume of exemption requests in the organization, and any other relevant information concerning the circumstances of the employee's request.	Exemption request package that includes employee's request and supervisory information concerning employee's occupation, work environment, and other circumstances of the request.	Decision Authority Support Office
Decision Authority Support Office	Receive and track processing of exemption request package. Supplement package with individual advice from subject matter experts and relevant factual information, as directed by the Decision Authority.	Exemption request package that includes employee's request; supervisor information concerning employee's occupation, work environment, and other circumstances of the request; and any supporting documentation relevant to the Decision Authority's analysis.	Decision Authority

Decision Authority	Review submitted documentation, request any reasonably necessary additional information, and prepare written decision in consultation with legal advisors and with the advice of subject matter experts as appropriate.	Written decision that addresses employee's individual circumstances and has been reviewed by appropriate legal advisors.	Supervisor
Supervisor	Receive decision, discuss with employee. If exemption approved, implement mitigation measures and, if necessary, address any follow-on requests for accommodation in accordance with Component EEO procedures. If disapproved, provide opportunity for counseling by medical professional or other appropriate expert/ initiate requirement for vaccination. Work with the legal advisor(s) and, as appropriate, HR LMER and EEO offices.	If approved, employee continues to comply with generally-applicable mitigation measures (e.g., screening testing, masking, and physical distancing) and any other mitigation measures directed by the Decision Authority or management officials. If disapproved, vaccination tracking and/or progressive discipline.	Employee

j. Exemption Criteria.

i. Religious Exemption Requests. Requests for religious exemption will be analyzed pursuant to the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. § 2000bb et seq. RFRA prohibits the Government from substantially burdening a person's exercise of religion, unless it demonstrates

that application of the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest. In the first instance, Decision Authorities are to determine whether the requestor has met his or her burden to establish that the vaccination requirement imposes a substantial burden on exercise of a sincerely held religious belief. If so, Decision Authorities analyze the request to determine whether the burden on religious exercise is the least restrictive means of furthering the Government's compelling interest in health and safety of the DoD workforce, and the health and safety of members of the public with whom they interact. If vaccination is not the least restrictive means, the exemption will be granted and supervisors will implement the less restrictive means.

ii. Medical Exemption Requests. Pursuant to the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791 et seq. Decision Authorities will analyze requests for medical exemption to determine whether the medical condition or circumstance prevents the employee from safely being vaccinated. If so, the employee will be exempt from vaccination (temporarily or permanently, as appropriate). Supervisors will direct compliance with applicable force health protection guidance and direct any mitigation measures that are necessary to prevent the spread of the virus that causes COVID-19 in the workplace and to the members of the public with whom the employee interacts. If such measures result in the employee being unable to perform the essential functions of the position, such matters will be referred to the equal employment opportunity reasonable accommodation process.

k. Additional Guidance.

i. Information collected concerning medical and religious exemption requests must be maintained in accordance with the privacy requirements in Attachment 9. Requests for medical exemption will be treated as medical records to be maintained separately from other personnel files.

ii. Discipline for failure to meet the COVID-19 vaccination requirement will not be initiated against a DoD civilian employee while a request for a medical or religious exemption from the COVID-19 vaccination requirement is pending determination. If a DoD civilian employee submits a request after discipline is initiated, disciplinary measures may be held in abeyance where appropriate.

iii. DoD civilian employees who are not fully vaccinated but who have a pending request for exemption from vaccination are required to comply with all force health protection and mitigation measures that are applicable to DoD civilian employees in the worksite who are not fully vaccinated (for example, screening testing (Attachment 7), masking, and physical distancing). Requests for reasonable accommodation related to those measures will be combined with any pending medical or religious exemption to vaccination request, for purposes of making a final determination concerning those measures. Without making a finding concerning whether a sufficient basis for a reasonable accommodation concerning those measures exists, the supervisor

may use the normal interactive process to pursue a temporary accommodation that protects the health and safety of the workplace while a decision concerning those measures is pending. Otherwise, requests for reasonable accommodation related to force health protection and mitigation measures may be analyzed separately from requests for exemption from vaccination.

iv. A DoD civilian employee who receives an exemption from the vaccination requirement may, because of the exemption, be unable to perform the duties and responsibilities of the position without a change in working conditions. Supervisors will immediately implement any mitigation measures required by the Decision Authority and applicable force health protection guidance. Supervisors may engage in the normal interactive process concerning any other measures necessary to protect the health and safety of the workplace.

v. Requests for exemption from candidates for employment will be handled consistent with the provisions in this attachment.

vi. Unless responsibility is otherwise established in a written support agreement, the Combatant Command Support Agent identified in reference (h) is responsible for administration of exemption processes applicable to DoD civilian employees assigned, detailed, or otherwise deployed to a Combatant Command area of responsibility.

ATTACHMENT 2
Requirements for DoD Contractor Personnel, Official Visitors, and Others Seeking Access to Facilities

1. DoD Contractor Personnel

a. For DoD contractor personnel, the DoD civilian vaccination deadline of November 22, 2021, does not apply. Vaccination requirements for DoD contractor personnel will be in accordance with reference (i), as implemented by reference (j), as directed under Executive Order 14042 (reference (k)).

b. DoD contractor personnel will complete the DD Form 3150, "Contractor and Visitor Certification of Vaccination" (Attachment 4), maintain a current completed DD Form 3150, and show it to authorized DoD personnel upon request. Failure to complete the DD Form 3150 may result in denying DoD contractor personnel access to the DoD facility to which access is sought.

c. DoD contractor personnel who are not fully vaccinated against COVID-19 because they are not performing under a covered contract that requires COVID-19 vaccination, due to a legally required accommodation, or who decline to attest to their COVID-19 vaccination status will be subject to COVID-19 screening testing at least weekly as set forth in this guidance (Attachment 7). DoD contractor personnel who refuse required screening testing will be denied access to DoD facilities.

d. In accordance with applicable contracts, DoD contractor personnel may be offered, but are not required to receive, COVID-19 vaccines at their DoD worksites.

2. Official Visitors

a. Official visitors will complete DD Form 3150, "Contractor and Visitor Certification of Vaccination"[3] (Attachment 4); and maintain a current completed DD Form 3150 and show it to authorized DoD personnel, upon request. Failure to complete the DD Form 3150 may result in denial of an official visitor's access to the DoD facility to which access is sought.

b. Official visitors who are not fully vaccinated against COVID-19, or who decline to volunteer their COVID-19 vaccination status, must show an electronic or paper copy of negative results from an FDA-authorized or approved COVID-19 test administered no earlier than 72 hours prior to their visit. If an official visitor is unable to show a negative COVID-19 test result, the visitor may be provided onsite self-testing, if available, or will be denied access to the DoD facilities to which access is sought. Service members who are not on active duty at the time of their official visit are subject to the requirements in this paragraph.

[3] **https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd3150.pdf**

c. Official visitors will follow applicable policies and procedures of both DoD and the Department or Agency they are visiting, if different from DoD.

3. Others Seeking Access to Facilities

Individuals other than official visitors seeking access to facilities located on DoD installations, but operated by other Federal departments and agencies, will follow the policies and procedures of that other department or agency.

ATTACHMENT 3
DD Form 3175 – "DoD Civilian Employee Certification of Vaccination"

CUI (when filled in)

DoD CIVILIAN EMPLOYEE CERTIFICATION OF VACCINATION

PRIVACY ACT STATEMENT

Authority: Pursuant to 5 U.S.C. chapters 11 and 79, and in discharging the functions directed under Executive Order 14043, Requiring Coronavirus Disease 2019 Vaccination for Federal Employees (Sept. 9, 2021), DoD is authorized to collect this information. Additional authorities for the systems of records associated with this collection of information also include: E.O. 13991, Protecting the Federal Workforce and Requiring Mask-Wearing; E.O. 12196, Occupational Safety and Health Program for Federal Employees; 10 U.S.C. 113, 10 U.S.C. 136, 10 U.S.C. 7013, 10 U.S.C. 8013, 10 U.S.C. 9013, 10 U.S.C. 2672; DoD Directive 5525.21; and DoD Instruction 6200.03. Providing this information is mandatory, and DoD is authorized to impose penalties for failure to provide the information pursuant to applicable Federal personnel laws and regulations.

Principal Purpose: This information is being collected and maintained to implement Coronavirus Disease 2019 (COVID-19) workplace safety plans, and ensure the safety and protection of the DoD workforce, workplace, and other DoD facilities and environments, consistent with the above-referenced authorities, the COVID-19 Workplace Safety: Agency Model Safety Principles established by the Safer Federal Workforce Task Force, and guidance from the Centers for Disease Control and Prevention and the Occupational Safety and Health Administration.

Routine Use(s): While the information requested on this form is intended to be used primarily for internal purposes, in certain circumstances it may be necessary to disclose this information externally, for example to disclose information to: a person, organization or governmental entity as necessary and relevant to notify them of, respond to, or guard against a public health emergency, or other similar crisis, including to comply with laws governing the reporting of communicable disease or other laws concerning health and safety in the work environment; adjudicative bodies (e.g., the Merit System Protection Board), arbitrators, and hearing examiners to the extent necessary to carry out their authorized duties regarding Federal employment; contractors, grantees, experts, consultants, students, and others as necessary to perform their duties for the Federal government; or agencies, courts, and persons as necessary and relevant in the course of litigation, and as necessary and in accordance with requirements for law enforcement; or to a person authorized to act on your behalf.

A complete list of routine uses may be found in the applicable System of Records Notice (SORN) associated with the collection of this information as follows: For most Federal civilian employees: OPM/GOVT-10, Employee Medical File System Records, 75 Fed. Reg. 35099 (Jun. 21, 2010), amended 80 Fed. Reg. 74815 (Nov. 30, 2015). For Federal civilian employees not covered by OPM/GOVT-10: DPR 39 DoD, DoD Personnel Accountability and Assessment System of Records, 85 Fed. Reg. 17047 (Mar. 26, 2020) (also available at https://dpcld.defense.gov/Portals/49/Documents/Privacy/SORNs/OSDJS/DPR-39-DoD.pdf).

Consequences of Failure to Provide Information: Providing this information is mandatory. Unless granted an exemption, all covered Federal civilian employees are required to be vaccinated against COVID-19. Employees are required to provide documentation concerning their vaccination status to their employing DoD Component. Failure to provide this information may subject you to disciplinary action, including and up to removal from Federal service.

INSTRUCTIONS: Section A of this form should be completed by DoD civilian employees only. Section B of this form should be completed by the DoD civilian employee's supervisor (or authorized human resources official). This form should be completed by DoD civilian employees only. Service members and employees of DoD contractors should not complete this form.

SECTION A. To be completed by DoD civilian employees.

1. CIVILIAN EMPLOYEE NAME *(Last, First, MI)*:	2. CIVILIAN EMPLOYEE DoD ID NUMBER:

3. PLEASE CHECK ALL THAT COINCIDES WITH YOUR COVID-19 VACCINATION STATUS:

☐ 3.a. I am fully vaccinated.
Individuals are considered "fully vaccinated" two weeks after completing the second dose of a two-dose COVID-19 vaccine or two weeks after receiving a single dose of a one-dose vaccine. Accepted COVID-19 vaccines are those which have received a license or emergency use authorization from the U.S. Food and Drug Administration and those COVID-19 vaccines on the World Health Organization Emergency Use Listing. "Fully vaccinated" also includes circumstances in which the individual was a participant in a U.S. site clinical trial and has received all recommended doses.

☐ 3.b. I have received one or more doses, but I am not yet considered fully vaccinated (in accordance with the definition of fully vaccinated above).

☐ 3.c. I have submitted proof of vaccination to my supervisor.
Proof of vaccination includes a copy of the record of immunization from a health care provider or pharmacy, a copy of the COVID-19 Vaccination Record Card, a copy of medical records documenting the vaccination, a copy of immunization records from a public health or state immunization information system, or a copy of any other official documentation. Employees may provide a digital copy of such records, including, for example, a digital photograph, scanned image, or PDF of such a record that is clear and legible.

☐ 3.d. I have not received any vaccination doses.

☐ 3.e. I have submitted a request for an exemption from vaccination and a decision is still pending.

☐ 3.f. I have an approved exemption from vaccination.

Controlled by: OUSD(P&R)
Controlled by: ASD(HA)
CUI Category: HLTH, PRVCY, OPSEC
LDC: DL(DoD Only)
POC: osd.pentagon.ousd-p-r.mbx.forms@mail.mil

4. EMPLOYEE VACCINE INFORMATION *(Employees checking block 3.a. should skip block 4 and go to block 5):*

4.a. VACCINE MANUFACTURER(S) OR VACCINE PRODUCT NAME(S):

- ☐ Pfizer-BioNTech/Comirnaty
- ☐ Moderna
- ☐ AstraZeneca/Oxford
- ☐ Johnson and Johnson (J&J)/Janssen
- ☐ Novavax
- ☐ Other U.S. Food and Drug Administration licensed or authorized, World Health Organization Emergency Use listed vaccine or U.S. site clinical trial vaccine (provide name):

4.b. DATE OF FIRST DOSE:

4.c. DATE OF SECOND DOSE *(if two-dose vaccine):*

4.d. DATE FULLY VACCINATED:

5. CERTIFICATION/KNOWLEDGE OF POSSIBLE ACTIONS FOR FALSE STATEMENTS

☐ I certify that the information I have provided on this form and the proof of vaccination documentation I have submitted is true and correct. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both (18 U.S.C. 1001). I understand that making a false statement on this form could result in additional administrative action including an adverse personnel action up to and including removal from my position.

6. CIVILIAN EMPLOYEE SIGNATURE:

7. DATE:

SECTION B. To be completed by the supervisor of the DoD civilian employee completing section A (or an authorized human resources official)

8. SUPERVISOR PROOF OF VACCINATION REVIEW

- ☐ 8.a. Proof of vaccination not received.
- ☐ 8.b. Proof of vaccination received and under review.
- ☐ 8.c. Proof of vaccination received and reviewed.

9. STATUS OF VACCINATION - EXEMPTION REVIEW

- ☐ 9.a. Exemption request received and pending disposition.
- ☐ 9.b. Exemption request received and approved.
- ☐ 9.c. Exemption request received and denied.
- ☐ 9.d. Exemption request not received.

10. SUPERVISOR / AUTHORIZED HR OFFICIAL NAME *(Last, First, MI):*

11. SUPERVISOR / AUTHORIZED HR OFFICIAL DoD ID NUMBER:

12. SUPERVISOR / AUTHORIZED HR OFFICIAL SIGNATURE:

13. DATE:

ATTACHMENT 4
DD Form 3150 – "Contractor Personnel and Visitor Certification of Vaccination"

CUI (when filled in)

CONTRACTOR PERSONNEL AND VISITOR CERTIFICATION OF VACCINATION	OMB No. 0704-0613 Expiration: 20220228

AGENCY DISCLOSURE NOTICE

The public reporting burden for this collection of information is estimated to average 2 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Defense, Washington Headquarters Services, at whs.mc-alex.esd.mbx.dd-dod-informationcollections@mail.mil. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

PRIVACY ACT STATEMENT

Authority: DoD is authorized to collect the information on this form pursuant to Executive Order (E.O.) 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors; E.O. 13991, Protecting the Federal Workforce and Requiring Mask-Wearing; and E.O. 12196, Occupational Safety and Health Program for Federal Employees; as well as 10 U.S.C. 113, 10 U.S.C. 136, 10 U.S.C. 7013, 10 U.S.C. 8013, 10 U.S.C. 9013, 10 U.S.C. 2672, 5 U.S.C. chapter 79, and DoD Instruction 6200.03.

Principal Purpose: This information is being collected to implement Coronavirus Disease 2019 (COVID-19) workplace safety plans, including DoD's COVID-19 testing programs, and to ensure the safety and protection of the DoD workforce, workplace, and other DoD facilities and environments, consistent with the above-referenced authorities, the COVID-19 Workplace Safety: Agency Model Safety Principles established by the Safer Federal Workforce Task Force, and guidance from the Centers for Disease Control and Prevention and the Occupational Safety and Health Administration.

Routine Use(s): While the information requested on this form is intended to be used primarily for internal purposes, in certain circumstances it may be necessary to disclose this information externally, for example to disclose information to: a person, organization, or governmental entity as necessary and relevant to notify them of, respond to, or guard against a public health emergency or other similar crisis, including to comply with laws governing the reporting of communicable disease or other laws concerning health and safety in the work environment; adjudicative or administrative bodies or officials when the records are relevant and necessary to an adjudicative or administrative proceeding; contractors, grantees, experts, consultants, students, and others as necessary to perform their duties for the Federal government; agencies, courts, and persons as necessary and relevant in the course of litigation, and as necessary and in accordance with requirements for law enforcement; or to a person authorized to act on your behalf. A complete list of routine uses may be found in the applicable System of Records Notice (SORN) associated with the collection of this information from contractor personnel and DoD visitors: DPR 39 DoD, DoD Personnel Accountability and Assessment System of Records, 85 Fed. Reg. 17047 (Mar. 26, 2020) (also available at https://dpcld.defense.gov/Portals/49/Documents/Privacy/SORNs/OSDJS/DPR-39-DoD.pdf).

Consequences of Failure to Provide Information: Providing this information is voluntary. However, if you fail to provide this information, you will be treated as not fully vaccinated for purposes of implementing safety measures, including subject to COVID-19 screening testing and/or denied access to DoD facilities. Failure to provide such information may also hinder DoD's ability to implement COVID-19 workplace safety plans, thereby increasing the health or safety risk to DoD-affiliated personnel and DoD facilities.

INSTRUCTIONS: This form should be completed by DoD contractor personnel and official visitors in accordance with current DoD Force Health Protection Guidance. DoD civilian employees should not complete this form.

1. NAME *(Last, First, MI)*:	2. DoD ID NUMBER:

3. PLEASE CHECK THE BOX BELOW THAT COINCIDES WITH YOUR COVID-19 VACCINATION STATUS:

☐ I am fully vaccinated.
Individuals are considered "fully vaccinated" two weeks after completing the second dose of a two-dose COVID-19 vaccine or two weeks after receiving a single dose of a one-dose vaccine. Accepted COVID-19 vaccines are those which have received a license or emergency use authorization from the U.S. Food and Drug Administration and those COVID-19 vaccines on the World Health Organization Emergency Use Listing. "Fully vaccinated" also includes circumstances in which the individual was a participant in a U.S. site clinical trial and has received all recommended doses.

☐ I am not yet fully vaccinated. I received only one dose of an accepted two-dose COVID-19 vaccine, or I received my final dose of an accepted COVID-19 vaccine less than two weeks ago.

☐ I have not been vaccinated.

☐ I decline to respond.

Individuals who choose not to complete the form will be assumed to be not fully vaccinated for purposes of application of the safety protocols. If you are not vaccinated due to medical or religious reasons, please check either "I have not been vaccinated" or "I decline to respond." Note that if you have already received one dose of a vaccine, but are not yet fully vaccinated, or if you received your final dose less than two weeks ago, then you will be treated as not fully vaccinated until you are at least two weeks past your final dose and resubmit your vaccination information.

☐ I certify that the information provided in this form is accurate and true to the best of my knowledge.

I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both (18 U.S.C. 1001). Checking "I decline to respond" does not constitute a false statement.

4. DATE *(YYYYMMDD)*	5. SIGNATURE *(Full Name)*

DD FORM 3150, OCT 2021 CUI (when filled in)

Controlled by: OUSD(P&R)
Controlled by: ASD(HA)
CUI Category: HLTH: PRVCY: OPSEC
LDC: DL(DoD Only)
POC: osd.pentagon.ousd-pr.mbx.forms@mail.mil

Page 1 of 1

ATTACHMENT 5
DD Form 3176 – "Request for a Medical Exemption or Delay to the COVID-19 Vaccination Requirement"

CUI (when filled in)

REQUEST FOR A MEDICAL EXEMPTION OR DELAY TO THE COVID-19 VACCINATION REQUIREMENT

OMB No. 0704-0619
Exp. 20220430

The public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Defense, Washington Headquarters Services, at whs.mc-alex.esd.mbx.dd-dod-informationcollections@mail.mil. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

PRIVACY ACT STATEMENT

Authority: DoD is authorized to collect the information on this form pursuant to 29 U.S.C. 794, 42 U.S.C. Chapter 21, Subch. VI; Executive Order (E.O.) 14043, Requiring Coronavirus Disease 2019 Vaccination for Federal Employees; E.O. 13163, Increasing the Opportunities for Individuals with Disabilities to be Employed in the Federal Government; E.O. 13164, Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation; 29 CFR 1614.203, Rehabilitation Act; DoD Directive 1020.1, Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of Defense; as well as 10 U.S.C. 113, 10 U.S.C. 136, 10 U.S.C. 7013, 10 U.S.C. 8013, 10 U.S.C. 9013, 10 U.S.C. 2672, 5 U.S.C. chapter 79, and DoD Instruction 6200.03.

Principal Purpose: The information on this form is being collected so that DoD may determine whether to grant your request for a medical exemption from the COVID-19 vaccination requirement for federal employees, pursuant to Executive Order 14043 and in furtherance of COVID-19 workplace safety plans.

Routine Use(s): While the information requested on this form is intended to be used primarily for internal purposes, in certain circumstances it may be necessary to disclose this information externally. For example, disclosure of medical condition or history information to authorized government officials for the purpose of conducting an investigation into DoD's compliance with the Rehabilitation Act of 1973; disclosure of medical condition or history information to first aid and safety personnel in the event an employee's medical condition might require emergency treatment or special procedures; to Federal agencies/entities participating in the DoD Computer/Electronic Accommodations Program (CAP) to permit the agency to carry out its responsibilities under the program; A complete list of routine uses may be found in the applicable System of Records Notice (SORN) associated with the collection of this information: DoD 0007, Defense Reasonable Accommodations and Assistive Technology Records, 86 Fed. Reg. 36692 (July. 22, 2010) (available at https://www.govinfo.gov/content/pkg/FR-2021-07-22/pdf/2021-15601.pdf).

Consequences of Failure to Provide Information: Providing this information is voluntary and use of this form is optional. Failure to provide the information requested on this form may impact DoD's ability to evaluate or act upon a request for a medical exemption from the COVID-19 vaccination requirement. Any intentional misrepresentation to the Federal Government may result in legal consequences, including termination or removal from Federal Service.

Instructions: Part 1 is to be completed by DoD civilian employees. Part 2 is to be completed by a licensed health care provider. Provide narrative responses where applicable (Blocks 8-10, 15-17). If additional space is needed, proceed on the appropriate continuation block (Block 11 or 20) by annotating the Section and Line number and continue your narrative response. Signing this form constitutes a declaration that the information you provide is, to the best of your knowledge and ability, true and correct. Any intentional misrepresentation to the Federal Government may result in legal consequences, including removal from Federal Service.

PART 1. TO BE COMPLETED BY THE DOD CIVILIAN EMPLOYEE

1. Employee Name *(Last, First, Middle Initial)*		2. DoD ID Number
3. Office Symbol		4. Date of Request *(YYYYMMDD)*
5. Position/Title	6. Supervisor Name	7. Supervisor Phone Number

8. Please provide a description of the medical condition or circumstance that is the basis for the request for a medical exemption from the COVID-19 vaccination requirement.

9. Please provide an explanation of why the medical condition or circumstance prevents you from being vaccinated.

10. Please provide any additional information, that addresses your particular medical condition or circumstance, which may be helpful in resolving your request for a medical exemption or delay from the COVID-19 vaccination requirement. If you have medical documentation (in addition to Part 2 of this Form) that addresses your particular medical condition or circumstance you may submit the documentation to your supervisor along with this form.

DD FORM 3176, OCT 2021
PREVIOUS EDITION IS OBSOLETE.

CUI (when filled in)

Controlled by: OUSD(P&R)
CUI Category: HLTH, PRVCY, OPSEC
LDC: DL(DoD Only)
POC: dodhra.mc-alex.dhra-hq.mbx.forms@mail.mil

11. Continuation	
I declare to the best of my knowledge and ability that the foregoing is true and correct.	
12. Date *(YYYYMMDD)*	13. Signature

PART 2. COMPLETED BY EMPLOYEE'S HEALTH CARE PROVIDER

14. Employee Name

MEDICAL CERTIFICATION FOR COVID-19 VACCINE EXEMPTION OR DELAY

Dear Health Care Provider:

The Department of Defense requires its employees to be fully vaccinated against COVID-19, pursuant to Executive Order of the President of the United States. As indicated in Part 1, the individual named above is seeking a medical exemption to the requirement for COVID-19 vaccination or a delay because of a temporary condition or medical circumstance. Please complete this form to assist the Department in its review process.

Please provide at least the following information, where applicable, and use the continuation block as needed:

15. Please identify any contraindication(s) or precaution(s) for COVID-19 vaccination that are applicable to the individual, and for each contraindication or precaution, indicate:
(a) whether it is recognized by the U.S. Centers for Disease Control and Prevention pursuant to its guidance; and
(b) whether it is listed in the package insert or Emergency Use Authorization fact sheet for each of the COVID-19 vaccines authorized or approved for use in the United States.

16. Please provide a statement detailing how the individual's condition and medical circumstances are such that COVID-19 vaccination is not considered safe. Please explain the specific nature of the medical condition or circumstance that contraindicates immunization with a COVID-19 vaccine or might increase the risk for a serious adverse reaction.

17. Please provide any other medical information that would limit the employee from receiving any COVID-19 vaccine.

18. The condition described above is:	19. If the employee is seeking a delay due to a temporary medical condition or circumstance, please indicate when the employee would be able to safely receive a COVID-19 vaccination - provide details if limited to specific COVID-19 vaccine(s) or type(s) of COVID-19 vaccine.
☐ Temporary ☐ Long-Term/Permanent	

20. Continuation

21. Health Care Provider Name/Title

22. Date *(YYYYMMDD)*	23. Medical Provider Signature

ATTACHMENT 6
DD Form 3177 – "Request for a Religious Exemption to the COVID-19 Vaccination Requirement"

CUI (when filled in)

REQUEST FOR A RELIGIOUS EXEMPTION TO THE COVID-19 VACCINATION REQUIREMENT

PRIVACY ACT STATEMENT

Authority: DoD is authorized to collect the information on this form pursuant to Executive Order (E.O.) 14043, Requiring Coronavirus Disease 2019 Vaccination for Federal Employees; 42 U.S.C. Chapter 21, Subchapter VI; 42 U.S.C. Chapter 21B; as well as 10 U.S.C. 113, 10 U.S.C. 136, 10 U.S.C. 7013, 10 U.S.C. 8013, 10 U.S.C. 9013, 10 U.S.C. 2672, 5 U.S.C. chapter 79, and DoD Instruction 6200.03.

Principal Purpose: The information on this form is being collected so that DoD may determine whether to grant your request for a religious exemption from the COVID-19 vaccination requirement for federal employees, pursuant to Executive Order 14043 and in furtherance of COVID-19 workplace safety plans. Consistent with the Religious Freedom Restoration Act of 1993, 42 U.S.C. Chapter 21B, and Title VII of the Civil Rights Act, 42 U.S.C. Chapter 21, Subchapter VI, individuals seeking a religious exemption from the vaccination requirement will submit to DoD supporting information about their religious beliefs or practices in order for DoD to evaluate the exemption request.

Routine Use(s): While the information requested on this form is intended to be used primarily for internal purposes, in certain circumstances it may be necessary to disclose this information externally. For example to disclose information to: a person, organization, or governmental entity as necessary and relevant to notify them of, respond to, or guard against a public health emergency or other similar crisis, including to comply with laws governing the reporting of communicable disease or other laws concerning health and safety in the work environment; adjudicative or administrative bodies or officials when the records are relevant and necessary to an adjudicative or administrative proceeding; contractors, grantees, experts, consultants, students, and others as necessary to perform their duties for the Federal government; agencies, courts, and persons as necessary and relevant in the course of litigation, and as necessary and in accordance with requirements for law enforcement; or to a person authorized to act on your behalf. A complete list of routine uses may be found in the applicable System of Records Notices (SORN) associated with the collection of this information: DPR 39 DoD, DoD Personnel Accountability and Assessment System of Records, 85 Fed. Reg. 17047 (Mar. 26, 2020) (also available at https://dpcld.defense.gov/Portals/49/Documents/Privacy/SORNs/OSDJS/DPR-39-DoD.pdf).

Consequences of Failure to Provide Information: Providing this information is voluntary and use of this form is optional. Failure to provide the information requested on this form may impact DoD's ability to evaluate or act upon a request for a religious exemption from the COVID-19 vaccination requirement. Any intentional misrepresentation to the Federal Government may result in legal consequences, including removal from Federal Service.

Instructions: To be completed by DoD civilian employees. Provide narrative responses where applicable (Blocks 8-11, 12.b, 12.c, 13). If additional space is needed, proceed on the continuation block (Block 14) by annotating the Section and Line number and continue your narrative response. Signing this form constitutes a declaration that the information you provide is, to the best of your knowledge and ability, true and correct. Any intentional misrepresentation to the Federal Government may result in legal consequences, including removal from Federal Service.

1. Employee Name *(Last, First, Middle Initial)*		2. DoD ID Number
3. Office Symbol		4. Date of Request *(YYYYMMDD)*
5. Position/title	6. Supervisor Name	7. Supervisor Phone Number

8. Please describe the religious belief, practice, or observance that is the basis for your request for a religious exemption from the COVID-19 vaccination requirement.

9. Please describe when and how you came to hold the religious belief or observe the religious practice.

10. Please describe how you have demonstrated the religious belief or observed the religious practice in the past.

11. Please explain how the COVID-19 vaccines conflict with your religious belief, practice, or observance.

12.a Have you previously raised an objection to a vaccination, medical treatment, or medicine based on a religious belief or practice.

☐ Yes ☐ No

12.b If Yes, please provide a description of the circumstances, timing, and resolution of the matter.

12.c If No, please provide an explanation as to why your objection is limited to the particular COVID-19 vaccines.

13. Please provide any additional information that may be helpful in resolving your request for a religious exemption from the COVID-19 vaccination requirement. You may submit additional documentation in support of this request to your supervisor along with this form.

14. Continuation

I declare to the best of my knowledge and ability that the foregoing is true and correct.

15. Date *(YYYYMMDD)*	16. Signature

ATTACHMENT 7
COVID-19 Screening Testing Requirements

1. To establish COVID-19 screening testing for individuals for whom screening testing is required, DoD Components will:

    a. Execute the screening testing requirement with COVID-19 self-collection kits or self-tests at least weekly (depending on the type of test kit used) that should be performed primarily onsite at the installation or facility with proper supervision and documentation of testing results. If onsite COVID-19 screening testing is not feasible, as an alternative self-testing may be performed at home or in other locations (Note: these COVID-19 self-tests do not require a health care provider's clinical care order and are, therefore, considered an over-the-counter test and do not require medical support to complete). Screening testing will use those tests authorized by Attachment 8; and

    b. Procure and provide these COVID-19 self-tests and establish guidance for where and how these tests will be distributed and conducted and how results are to be reported.

        i. DoD civilian employees are responsible for providing documentation of negative COVID-19 test results, upon receipt, to the appropriate supervisor. For purposes of screening testing requirements, "supervisor" includes authorized human resources officials. DoD civilian employees may not be required to use their own personal equipment for the purpose of documenting test results; offsite tests may not be used if there is not a means to document results using government equipment. The supervisor is responsible for maintaining any COVID-19 test results provided by DoD civilian employees in accordance with the privacy protection measures in Attachment 9.
        ii. DoD contractor personnel with CRA will maintain their most recent COVID-19 test result and show such results to authorized DoD personnel upon request.

2. After COVID-19 screening testing procedures are established, the personnel identified in this memorandum as subject to screening testing are required to have a COVID-19 screening test using a test authorized by Attachment 8, and receive a negative COVID-19 screening test result for entry into a DoD facility. If the COVID-19 screening test is administered offsite, the negative result must be from a test performed within the prior 72 hours. If a COVID-19 screening test is administered onsite, the test will be administered before DoD civilian employees and contractor personnel go to their work areas. In accordance with reference (l) and CDC guidance, personnel who have recovered from a recent COVID infection and who remain asymptomatic are exempted from regular screening testing for 90 days following their documented date of recovery. Documented proof of this recovery shall be provided upon request.

3. DoD civilian employees and DoD contractor personnel with CRA who have positive COVID-19 screening tests will be required to remain away from the workplace in accordance

with references (l) and (m). DoD civilian employees and DoD contractor personnel with CRA with positive COVID-19 screening tests will be offered, but not required to take, confirmatory laboratory-based molecular (i.e., polymerase chain reaction) testing paid for by the relevant DoD Component. Contact tracing and mitigation measures will be conducted in accordance with references (l) and (m). If the confirmatory test is negative, the individual is not considered to be COVID-19 positive and will be allowed into the workplace.

4. For DoD civilian employees, COVID-19 screening testing is expected to take no more than one hour of regular duty time, per test, to complete required testing as directed by the DoD Component. Laboratory-based confirmatory COVID-19 testing for initial positive screening test results is expected to take no more than two hours of duty time. This includes time for travel to the testing site, time to complete testing, and time to return to work. Commanders and supervisors will monitor duty time usage and keep duty time used for testing within these parameters to the extent possible.

5. DoD Components may bar DoD civilian employees who refuse required screening testing from their worksites on the installation or facility to protect the safety of others, including while any progressive disciplinary actions are pending. While barred from their worksites on the installation or facility, such DoD civilian employees may be required to telework, as appropriate.

Pleading Number : 2023013618 Submission date : 2023-04-11 11:38:13 Confirmation Number: 564620953 page 93 of 178

ATTACHMENT 8
Requirements for Obtaining Self-Collection Kits and Self-Tests

COVID-19 self-tests must have Instructions for Use and FDA approval, 510(K) premarket clearance or have an FDA Emergency Use Authorization, and will be made available through the Defense Logistics Agency. DoD Components are responsible for funding required COVID-19 screening tests.

Funding for COVID-19 testing, if self-collection kits or self-tests are not available:

a. Each DoD Component will reimburse Service members and DoD civilian employees for COVID-19 screening tests that require payment for purposes of meeting the screening testing requirement (e.g., if the screening test is not available through the DoD Component and must be administered by a facility who charges for the test).

b. For COVID-19 testing of DoD contractor personnel with CRA, DoD Components will offer, if available, COVID-19 testing similar to that offered to DoD civilian employees at the DoD Component's expense and at no cost to the contractor personnel or the contractor.

Pleading Number : 2023013618 Submission date : 2023-04-11 11:38:13 Confirmation Number: 564620953 page 94 of 178

ATTACHMENT 9
Privacy Requirements

Under this guidance memorandum, the DoD may collect and maintain sensitive and private information about individuals, including medical information. Consistent with the Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb et seq., and Title VII of the Civil Rights Act, 42 U.S.C. § 2000e et seq., individuals seeking a religious exemption from the vaccination requirement will submit to DoD supporting information about their religious beliefs and practices in order for DoD to evaluate the exemption request. Information collected from individuals under this guidance, including vaccination information, test results, and medical or religious information supporting vaccine exemption requests, will be treated in accordance with applicable laws and policies on privacy, including the Privacy Act of 1974, 5 U.S.C. § 552a, and Department of Defense Instruction (DoDI) 5400.11, "DoD Privacy and Civil Liberties Programs," January 29, 2019 (reference (n)), the Rehabilitation Act of 1973, as amended ("Rehabilitation Act"), 29 U.S.C. § 791 et seq., and 5 CFR part 293, subpart E. While such information may be sensitive and is to be safeguarded, it is not covered by the Health Insurance Portability and Accountability Act (HIPAA) regulations found at 45 CFR parts 160, 162, and 164, and as implemented in DoDI 6025.18, "Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule Compliance in DoD Health Care Programs," and DoD Manual 6025.18, "Implementation of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule in DOD Health Care Programs."

Information gathered under this guidance may be shared with immediate supervisors, authorized human resources officials, designated decision makers, and, in appropriate cases, subject matter experts, who must access the information to implement the guidance. DoD Components are advised to consult their Component Privacy Officer and servicing legal office if there is a need to share medical or religious information collected under this guidance with DoD personnel beyond what this guidance permits or with individuals outside of DoD. Religious information will be accessible only to those persons who have a role in carrying out the procedures outlined in this memorandum. Medical information obtained from DoD civilian employees, including vaccination status, will be accessible only to immediate supervisors, authorized human resources officials, and, for exemption requests, designated decision makers and subject matter experts, who must access the information to implement the guidance in this memorandum. The Rehabilitation Act's requirements on confidentiality of medical information apply whether or not a DoD civilian employee has a disability.

DoD personnel will use appropriate safeguards in handling and storing DoD civilian employee medical information, including a DoD civilian employee's proof of vaccination, the DD Form 3175, COVID-19 test results, and exemption requests. Appropriate safeguards may include encrypting emails and electronic files, and role-based access to electronic storage environments where this information is maintained. In the event the information is maintained in paper form, supervisors and other authorized DoD personnel must ensure DoD civilian employee medical information remains confidential and is maintained separately from other personnel files (e.g., stored in a separate, sealed envelope marked as confidential DoD civilian employee medical information and maintained in locked file cabinets or a secured room). DoD Components are advised to refer to applicable internal guidance on the handling, storage, and disposition of DoD civilian employee medical records, and to consult their Component Privacy Officer as needed for further guidance.

ATTACHMENT 10
References

(a) Under Secretary of Defense for Personnel and Readiness Memorandum, "Force Health Protection Guidance (Supplement 23) Revision 2 – Department of Defense Guidance for Coronavirus Disease 2019 Vaccination Attestation, Screening Testing, and Vaccination Verification," October 29, 2021 (hereby rescinded)
(b) Safer Federal Workforce Task Force, "COVID-19 Workplace Safety: Agency Model Safety Principles," September 13, 2021
(c) Executive Order 14043, "Requiring Coronavirus Disease 2019 Vaccination for Federal Employees," September 9, 2021
(d) Deputy Secretary of Defense Memorandum, "Mandatory Coronavirus Disease 2019 Vaccination of DoD Civilian Employees," October 1, 2021
(e) Secretary of Defense Memorandum, "Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members," August 24, 2021
(f) United States Office of Personnel Management Memorandum, "Guidance on Applying Coronavirus Disease 2019 Vaccination Requirements to New Hires – Executive Order 14043," October 1, 2021
(g) United States Office of Personnel Management Memorandum, "Guidance on Enforcing Coronavirus Disease 2019 Vaccination Requirement for Federal Employees – Executive Order 14043," October 1, 2021
(h) Department of Defense Directive 5100.03, "Support of the Headquarters of Combatant and Subordinate Unified Command" February 9, 2011, Incorporating Change 1, September 7, 2017
(i) Safer Federal Workforce Task Force, "COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors," September 24, 2021
(j) Principal Director for Defense Pricing and Contracting Memorandum, "Class Deviation 2021-O0009—Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors, October 1, 2021
(k) Executive Order 14042, "Ensuring Adequate COVID Safety Protocols for Federal Contractors," September 9, 2021
(l) Acting Under Secretary of Defense for Personnel and Readiness Memorandum, "Force Health Protection Guidance (Supplement 18) – Department of Defense Guidance for Protecting All Personnel in Department of Defense Workplaces During the Coronavirus Disease 2019 Pandemic," March 17, 2021
(m) Acting Under Secretary of Defense for Personnel and Readiness Memorandum, "Force Health Protection Guidance (Supplement 15) Revision 2 – Department of Defense Guidance for Coronavirus Disease 2019 Laboratory Testing Services," July 2, 2021
(n) Department of Defense Instruction 5400.11, "DoD Privacy and Civil Liberties Programs," January 29, 2019

Pleading Number : 2023013618 Submission date : 2023-04-11 11:38:13 Confirmation Number: 564620953 page 96 of 178

TAB 2

Attachment 2, Planning & Implementation of Screening Testing Programs

DoD Fourth Estate Components were required to implement coronavirus disease 2019 (COVID-19) screening testing programs for unvaccinated personnel by November 22, 2021, as required by Force Health Protection Guidance (Supplement 23) Revision 3, "Department of Defense Guidance for Coronavirus Disease 2019 Vaccination Attestation, Screening Testing, and Vaccination Verification," December 20, 2021 ("FHP-23, Rev. 3"). Supplemental information on planning and implementation of COVID-19 screening testing programs is below.

Fourth Estate Components are responsible for funding required COVID-19 screening testing programs. Although initial planning involved conducting programs until April 2022, Fourth Estate Components now should plan to conduct screening testing programs through June 2022.

Component screening testing programs must have the capability to test unvaccinated Service members, DoD civilian employees, and DoD contractor personnel who make unscheduled visits to the workplace. To preclude long lines and wait times every Monday morning for those locations with larger populations, those DoD civilian employees subject to the weekly testing requirement and enrolled in an onsite screening test program may test any time during the work week. Personnel enrolled in weekly testing should test on the same day each week where possible.

Fourth Estate Components may procure over-the-counter self-test kits, consistent with requirements in FHP-23, Rev. 3, through the Defense Logistics Agency (DLA), which are available through FedMall. Authorized Fourth Estate Component personnel may order such test kits using Government Purchase Cards.

Fourth Estate Components may consider the following options to ensure unvaccinated personnel are tested as required by FHP-23, Rev. 3:

1. **Pentagon Reservation**. Washington Headquarters Services (WHS) has established an on-site screening testing program on the Pentagon Reservation for Service members, DoD civilian employees, and DoD contractor personnel who are subject to testing and who work on the Pentagon Reservation. Onsite testing is available in Pentagon Room 1B843 Monday through Friday from 0800-1400 hours daily. On site testing is available at the Mark Center, Room 01B27, on Tuesdays from 0800-1400. Testing is available at Crystal Square 4, 2d Floor, Suite 201, on Thursdays from 0800-1400. Testing for visitors may be made available if capacity and supplies permit. Information on making reservations for tests, testing locations, and hours of operations are at https://apps.sp.pentagon.mil/sites/Vaccination/Lists/COVID%20TESTING/calendar.aspx Components that use the Pentagon Reservation on site screening testing program should be prepared to provide reimbursement to WHS, if required.

2. **Tenant locations**. Fourth Estate Components that are tenants at, or adjacent to, other DoD or Federal facilities/military installations may coordinate with the host installation or facility to enroll their personnel in their host's screening testing program if available. Co-located

components also may pool their resources to establish a local testing program. This may be done on a reimbursable basis.

3. **Stand-alone locations**. Fourth Estate Components that are located in stand-alone facilities or contractor locations where the DoD conducts official business, or are within an agency's jurisdiction or control, and not located at, or adjacent to, other DoD or Federal facilities/military installations will establish their own screening testing plans and are encouraged to leverage DLA contract vehicle(s) to help establish such plans.

4. **Third-party screening test programs**. Fourth Estate Components with dispersed Service members, DoD civilian employees, and/or onsite DoD contractor personnel who are not located near a DoD installation or facility may leverage third-party COVID-19 screening tests. Service members and DoD civilian employees may be authorized to use third-party screening tests (e.g., drug stores, grocery store pharmacies, contracted test support). Fourth Estate Components must be prepared to reimburse Service members and DoD civilian employees who receive COVID-19 screening tests directly from third-party vendors. DoD Financial Management Regulation, Volume 10, Chapter 11, provides guidance on payment as reimbursement for personal expenses. COVID-19 screening test requirements for overseas locations are the same as for U.S.-based locations.

Test result documentation. As per Attachment 7 of FHP-23, Rev. 3, employees are responsible for providing documentation of negative COVID-19 test results to the appropriate supervisor, which may include an authorized human resources official.

Helpful links to COVID-19 related guidance and information:[1]

- Washington Headquarters Services (COVID-19 Guidance)
- Department of Defense (Coronavirus: DoD Response)
- Safer Federal Workforce (Frequently Asked Questions on COVID-19)
- Office of Personnel Management (Pandemic Frequently Asked Questions)
- Centers for Disease Control and Prevention (COVID-19 protocols)
- Occupational Safety and Health Administration (Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace)
- Food and Drug Administration (lists of approved in vitro diagnostic test devices)
- Food and Drug Administration (list of authorized vaccines)
- World Health Organization (lists approved vaccines for use around the world)

[1] To the extent any non-DoD guidance is inconsistent with DoD guidance, the DoD guidance is controlling for DoD.

TAB 3

Attachment 3, Fourth Estate Civilian Employee Requests for Exemption from Mandatory COVID-19 Vaccination

Fourth Estate Components will follow the procedures for exemption requests contained in Attachment 1 of FHP-23, Rev. 3. The following is supplemental guidance for Fourth Estate Components.

Fourth Estate Components will designate one or more Decision Authorities to act upon exemption requests and establish a Decision Authority Support Office. Fourth Estate Components will provide appropriate personnel and other resources to administratively support Decision Authorities, including support necessary to assist the Decision Authorities with preparing written products.

In addition, Fourth Estate Components will identify personnel to serve in advisory roles as subject matter experts who are available to advise the Decision Authority on a full-time basis. Identified subject matter experts may change over time, depending on the volume of requests. Subject matter experts provide individual input to the Decision Authority. In addition to legal advisors, Fourth Estate Components will identify subject matter experts with the following expertise:

Advisory Role	Suggested Source for Advisory Team Personnel
Human Resources (HR) representative	Defense Agency or DoD Field Activity (DAFA) HR office or servicing HR provider
Equal Employment Opportunity (EEO) representative	DAFA, EEO service provider
Medical representative	DAFA, Defense Health Agency, or Military Department (MILDEP)
Religious representative	DAFA or MILDEP

Defense Agencies and DoD Field Activities leading an exemption review process will designate a senior accountable official (SAO) to lead and provide oversight of their respective Component exemption review process and provide contact information to the DA&M. The DA&M will designate the SAO for WHS-serviced Components, including OSD, and establish a weekly in-progress review with Component SAOs to track progress, share best practices, lessons learned, and help address any concerns that may arise during the review process.

Fourth Estate Components, working with their respective HR and EEO offices or HR service providers, may enter into written agreements to use the exemption process established by another Fourth Estate Component. Such agreements shall address resourcing requirements, including military and civilian personnel.

The following chart reflects the current construct for Fourth Estate Component Decision Authorities. Components will provide any changes or requests for assistance to the ODA&M.

Decision Authority	Components Covered
Defense Logistics Agency (DLA)	DLA
Defense Finance and Accounting Service (DFAS)	DFAS, Defense Acquisition University and National Defense University
Washington Headquarters Service (WHS)	Office of the Secretary of Defense (including Defense Legal Services Agency (DLSA) elements not assigned to a client Defense agency or DoD field activity), WHS, Pentagon Force Protection Agency, Defense Personnel Accountability Agency, Defense Technology Security Administration, Defense Test Resource Management Center, Office of Local Defense Community Cooperation, Defense Security Cooperation Agency, Defense Technical Information Center, Defense Threat Reduction Agency, Defense Media Activity, Defense, Defense Microelectronics Activity, Missile Defense Agency, Space Development Agency, Joint Staff, and National Guard Bureau Headquarters[1]
Defense Counterintelligence and Security Agency (DCSA)	DCSA
Defense Intelligence Agency (DIA)	DIA
National Geospatial Imagery Agency (NGA)	NGA
National Reconnaissance Office (NRO)	NRO
National Security Agency (NSA)	NSA
Defense Information Systems Agency (DISA)	DISA
Defense Contract Management Agency (DCMA)	DCMA
Defense Contract Audit Agency (DCAA)	DCAA
Defense Advanced Research Projects Agency (DARPA)	DARPA
Defense Health Agency (DHA)	DHA, military medical treatment facilities under its authority, and Uniformed Services University of the Health Sciences
DoD Education Activity (DoDEA)	DoDEA
Defense Human Resources Activity (DHRA)	DHRA
Defense Commissary Agency	DeCA

[1] Consistent with DoD Instruction 1442.02, "Personnel Actions Involving Civilian Attorneys," September 30, 2010, for attorneys in the Office of General Counsel (OGC) and DLSA, Decision Authorities will decide only whether the requesting attorneys have met their burden of demonstrating that a medical condition prevents their vaccination or that the vaccination policy substantially burdens their religious exercise. The requests will then be referred back to the OGC/DLSA supervisory chain for further disposition.

Decision Authority	Components Covered
Army and Air Force Exchange Service (AAFES)	AAFES[2]

Fourth Estate Components will discuss exemption process plans and any necessary implementing agreements with the DA&M prior to the initiation of case reviews.

Fourth Estate Components should begin processing vaccination exemption requests on January 12, 2022, and with a goal to complete the review process by March 31, 2022. Fourth Estate Components must provide routine updates to their respective employees on the progress of their exemption requests with the estimated timeframe for when the employee will receive a response on their requested exemption from mandatory vaccination.

Fourth Estate Components will ensure coordination of strategic messaging including White House reporting, responses to Congressional inquiries, and media requests with the ODA&M.

[2] Although AAFES is not part of the Fourth Estate, vaccination and exemption reporting for AAFES is captured in the Fourth Estate Component reporting.

TAB 4

DoD OGC Coordination

Supplemental DA&M Guidance Implementing FHP-23, Revision 3

There is no legal objection, subject to comments.

//SIGNED//
Paul S. Koffsky
Senior Deputy General Counsel/Deputy General Counsel
(P&HP)

Date: 01/04/2022

TAB 4(m)

National Geospatial-Intelligence Agency

MANUAL

NUMBER 1455.1
19 February 2015
Administrative Update 11: 12 April 2019

HD

SUBJECT: Disciplinary and Adverse Actions

References: See Enclosure 1.

1. PURPOSE. This NGA Manual:

a. Establishes responsibilities and implementing procedures for NGAD 1455. (Reference (j))

b. Rescinds NGA Manual 1455.1, "Disciplinary and Adverse Actions," 26 August 2013. Administrative Revision: 5 May 2014

c. Supersedes those portions of NGAI 1403.5, "Performance-Based and Adverse Actions of Defense Intelligence Senior Executive Service (DISES) and Defense Intelligence Senior Level (DISL)" (Reference (q)), which applies to disciplinary and adverse actions for DISLs.

2. APPLICABILITY. This Manual:

a. Applies to all NGA civilian pay banded and DISL employees. This Manual does not apply to DISES, who are addressed under References (q) and (ac).

b. Exceptions:

(1) Civilian employees assigned to the Office of the Inspector General (OIG) will have different procedures and deciding officials per Reference (a) and Enclosure 2, paragraph 6.

(2) Attorneys in the Office of General Counsel (OGC) who are part of the Defense Legal Services Agency (Reference (h)) will have different procedures and deciding officials as determined by the General Counsel (GC) (Enclosure 2, paragraph 7).

(3) Central Intelligence Agency (CIA) employees permanently assigned to NGA (affiliates) are covered under CIA regulations for employee conduct and practices, but are also subject to NGA rules of conduct. Actions are taken in accordance with established guidelines and procedures outlined in a formal Memorandum of Agreement (Reference (af)) for the administration of disciplinary and adverse actions for affiliates.

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(4) Military personnel assigned to NGA are referred back to his/her military service for disciplinary or adverse action.

(5) Non-NGA civilian employees are referred to his/her parent organization for disciplinary or adverse action.

3. RESPONSIBILITIES. See Enclosure 2.

4. PROCEDURES. See Enclosures 3-9.

5. EFFECTIVE DATE. This NGAM is effective on the date of signature.

Ellen M. Ardrey
Director, Human Development

Enclosures
1. References
2. Responsibilities
3. Procedures
4. Process Flow for Formal Disciplinary or Adverse Actions – SAS and PEB Process
5. Path 1 (Non-PEB Cases)
6. Path 2 (PEB Cases)
7. Table 1 – Selecting Penalties
8. Table 2 – Table of Offenses and Penalties
9. Indefinite Suspension

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CHANGE LOG

Change Type	Change Date	Revised By	Pages Affected	Change Description
8	12/8/17	CPO	Whole document	Added new references to Enclosure 1 and updated new reference letters throughout the document.
9	10/22/18	CPO	3, 4, 12, 13	Re-numbered table of contents, inserted change log, removed "The employee's right to file a grievance through the Administrative Grievance System (AGS) and added the word "not."
10	12/17/18	CPO	14, 20	Added "(or other authorized management official)" and removed "~~During this period, t~~" from letter of reprimand. Added "(with the exception of letters of caution or letters of reprimand resulting from the PEB)" to proposal letters.
11	04/05/19	CPO	5,6,17,18, 20	(5,6) Updated reference dates. (17) Removed "Letters of Caution" based on changes made on 12/17/18. Changed D/Cos to D/EXDIR and CoS to EXDR and Associate Director titles. (18) Paragraph 4. Removed "Letter of Caution". (20) Changed Encl 6, Para 7.d. from "substantiating or supporting" to "relied upon by the PEB to support"

Note: *Change log was initiated and placed in policy on 12/8/17 for change #8. Previous 1-7 changes were not documented in change log.

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ENCLOSURE 1

REFERENCES

(a) 5 U.S.C. Section 8G(c), "Inspector General Act of 1978"
(b) 10 U.S.C. Section 1609, "Termination of Defense Intelligence Employees"
(c) 10 U.S.C. Section 1612(b), "Civil Service Protection"
(d) Presidential Policy Directive 19, "Protecting Whistleblowers with Access to Classified Information," 10 October 2012
(e) DoD Instruction (DoDI) 1400.25, Volume 2006, "DoD Civilian Personnel Management System: Defense Civilian Intelligence Personnel System (DCIPS) Compensation Administration," 03 March 2012
(f) DoDI 1400.25, Volume 2009, "DoD Civilian Personnel Management System: Defense Civilian Intelligence Personnel System (DCIPS) Disciplinary, Performance-Based, and Adverse Action Procedures," 20 May 2012, Incorporating Change 1, 21 March 2013
(g) DoDI 1400.25-Volume 2011, "DoD Civilian Personnel Management System: Defense Civilian Intelligence Personnel System (DCIPS) Performance Management," 14 August 2009 (Incorporating Change 1, 15 January 2010)
(h) DoDI 1442.02, "Personnel Actions Involving Civilian Attorneys," 30 September 2009
(i) NGA Policy Notice 7410.10, "Protecting Whistleblowers with Access to Classified Information," 06 June 2013
(j) NGA Directive (NGAD) 1455, "Disciplinary and Adverse Actions," 25 February 2015
(k) NGAD 1450, "Administrative Grievance System and Adverse Action Appeals Process," 15 April 2016
(l) NGAD 5200.2, "Personnel Security," 26 August 2013
(m) NGAD 7410, "Inspector General Operations," 02 June 2014
(n) NGA Instruction (NGAI) 1000.7, "Personal Relationships in the Workplace," 16 January 2019
(o) NGAI 1010.2, "Drug Abuse Testing," 18 September 2013
(p) NGAI 1020.2, "Reasonable Accommodation," 01 October 2005
(q) NGAI 1403.5, "Performance-Based and Adverse Actions for Defense Intelligence Senior Executive Services," 29 August 2008

(r) NGAI 1440.2, "Prevention of Sexual Harassment," 13 February 2009
(s) NGAI 1460.1, "Performance Management," 29 May 2007
(t) NGAI 5200.1, "Information Security," 15 December 2004, Incorporating Change, 10 July 2012
(u) NGAI 5205.1, "Protection of Sensitive Compartmented Information," 24 November 2003
(v) NGAI 5400.1, "NGA Ombudsman," 05 October 2012
(w) NGAI 5500.11, "Maintaining the Highest Standards of Ethical Conduct Program," 02 October 2008
(x) NGAI 5505.3, "Administrative Inquiries and Investigations," 07 August 2007
(y) NGAI 8040.1, "Records and Information Life Cycle Management," 22 April 2010
(z) NGAI 8470.2, "Internet Usage," 09 December 2009
(aa) NGAI 8470.3, "Use of Electronic Mail and Other Electronic Communications," 09 January 2006
(ab) NGAI 5500.7, "Handling of Personally Identified Information," 15 February 2013
(ac) NGA Manual 1400.10, "Establishing and Staffing Senior Executive Positions," 17 April 2014
(ad) NGAM 1450.2, "Administrative Grievance System and Adverse Action Appeal Process," 1 April 2016
(ae) NGAM 7410.11, "Inspector General Operations," 02 June 2014
(af) "Memorandum of Agreement between NGA and CIA for Affiliate Employee Discipline," 18 July 2013
(ag) HD Memorandum for Record, "NGA Time and Attendance Violations – Recommended Penalty Guidance"
(ah) NGA Office of Inspector General, "Management Inquiry Guide," 21 August 2013

ENCLOSURE 2

RESPONSIBILITIES

1. Supervisors and Managers.

a. Communicate expectations regarding appropriate conduct to subordinates and set an example by his/her own conduct.

b. Gather, analyze, and carefully consider relevant facts and circumstances, including the employee's explanation in accordance with (IAW) References (x) and (ah), before taking or recommending a disciplinary or adverse action.

c. Promptly initiate disciplinary or adverse actions when warranted and in a timely, fair, and impartial manner.

d. Except for trial period employees, apply progressive discipline if the employee does not correct the inappropriate conduct IAW References (f) and (j). Typically, removal will be imposed after a progression of penalties unless the severity of the first or second offense warrants. Charges of either a serious criminal act or gross negligence involving national security protections are not subject to progressive discipline and may result in removal on the first offense. For performance-related issues, see References (g) and (s).

e. Seek advice and assistance from a Human Development (HD) Employee Relations (ER) Specialist who will coordinate with the Special Activities Staff (SAS) and OGC before initiating an informal or formal action.

f. Consider the information and factors described in Enclosures 3-9 and initiate a disciplinary or adverse action as appropriate.

g. Refer any serious disciplinary or adverse actions over 5 days' suspension up to removal through the SAS to the Personnel Evaluation Board (PEB).

h. Refer employees to the Employee Assistance Program (EAP) when appropriate.

2. HD, ER Specialist.

a. Assist supervisors and managers in determining appropriate penalties and in preparing and coordinating all actions.

b. Provide regulatory and procedural advice to employees regarding employee rights.

c. In coordination with SAS, OGC, and if applicable, the PEB, ensure that an agency review for the proposed action is consistent with applicable laws, regulations, policies, procedural requirements, and the Table of Offenses and Penalties (Enclosures 3-9).

d. Prepare written disciplinary and adverse action letters in coordination with SAS and OGC.

e. Send final signed copies of all disciplinary and adverse action letters to the SAS for recordkeeping.

f. When requested by management, attend meetings where written disciplinary or adverse actions are presented to an employee.

3. Chief, HD SAS.

a. Serves as Executive Secretary to the PEB.

b. Provides employees and managers with advice and guidance regarding potential disciplinary or adverse actions, thereby facilitating early management intervention and prospects for timely remedies.

c. Reviews, advises, and provides guidance on all informal and formal employee disciplinary and adverse actions to help ensure fair and consistent application of these actions.

d. Forwards serious cases with recommended discipline of more than 5 days' suspension up to removal to PEB for review, discussion, and decision.

e. Maintains and retains final copies of all informal and formal disciplinary actions as the official agency copy and places them in the employee relations file and Official Personnel Folder (OPF) as hard and soft copies, according to the NGA records schedule (Reference (y)).

f. Provides a copy of any final letters of reprimand and decision letters for suspensions up to removals to the Personnel Security Division (SISP).

4. PEB.

a. Provide whole person review from an agency perspective to help ensure accuracy, fairness, effectiveness, and timeliness of disciplinary and adverse actions for cases presented to the PEB.

b. Provide a consistent, centralized approach for disciplinary and adverse actions.

c. Make recommendations on serious disciplinary and adverse action cases to higher level.

d. Enhance collaboration opportunities between HD, SI, and other respective offices.

e. Ensure that NGA Component leadership is aware of serious disciplinary and adverse action cases within his/her NGA Component.

f. Serve as the primary forum for agency review, discussion, and decision of serious employee misconduct or failure to improve performance to at least the minimally successful level following an Opportunity to Improve (OIP) that may result in over 5 days' suspension up to removal.

g. The PEB Chair shall:

(1) Review matters that present cause for significant concern regarding an employee's misconduct or continued unacceptable performance. The Chair will convene a PEB meeting, in person or virtually, to conduct this review.

(2) Refer security-related matters for review to the Chair, Personnel Security Board (PSB).

(3) Serve as the Proposing Official for disciplinary or adverse actions for serious cases.

(4) Review and approve all PEB meeting agendas, minutes, and documented outcomes.

h. PEB members will provide advice and assistance to the PEB Chair by analyzing and evaluating case information and relevant documentation including, but not limited to, employment record, performance appraisals (3 years), work history, and previous and current informal and formal disciplinary or adverse actions.

i. PEB membership. If a member or advisor is unable to attend a PEB meeting, any substitutions must be approved by the PEB Chair.

(1) PEB Chair - Deputy Director, HD (DD/HD)

(2) Deputy Director, Security and Installations (DD/SI)

(3) Senior-level executive in the employee's chain-of-command

(4) Advisory members - The following members will serve in an advisory capacity to provide the PEB Chair and members with specific facts and information. The PEB advisors will attend meetings at the request of the PEB Chair.

(a) Deputy, OGC

(b) Chief, Personnel Security, Office of Security (SISP)

(c) Employee's first-line supervisor

(d) Director or Deputy Director, IG

(e) Director or Deputy Director, Office of Diversity Management and Equal Employment Opportunity (ODE)

(f) Applicable Career Service Head only. This may not be delegated any further.

5. OGC.

a. Advises supervisors, HD ER Specialists, SAS, and PEB on the legal sufficiency of proposed disciplinary and adverse actions to include a review of all documents prepared when disciplining an employee.

b. Will not present cases (to include serious cases) involving OGC attorneys to the PEB IAW References (h) and (j).

c. The Deputy GC will serve as the Proposing Official to propose disciplinary or adverse action for an OGC attorney. The GC will serve as the Deciding Official to make the final determination on disciplinary or adverse action for an OGC attorney. The GC may delegate the authority to serve as the Proposing Official to first-line supervisors and, in such cases, may delegate the authority to serve as the Deciding Official to the Deputy GC.

6. Inspector General (IG).

a. Investigates reported and referred cases IAW References (m) and (ae).

b. Forwards all reports developing evidence of misconduct or potential misconduct by civilian employees to the HD SAS for review and potential action.

c. Conducts a review to determine whether a Personnel Action violated Reference (d) in regards to a protected whistleblower and may recommend that the agency take specific corrective action to return the employee, as nearly as practical and reasonable, to the position that the employee would have held had the reprisal not occurred. The D/NGA shall carefully consider the findings and actions recommended by the NGA IG in accordance with Reference (i). To the extent authorized by the law, HD will make the corrective action.

d. Serves as the Deciding Official to make the final determination on disciplinary or adverse action for an OIG employee. Per References (a) and (j), for serious cases

involving OIG employees, the PEB Chair will serve as the Proposing Official to propose disciplinary or adverse action for an OIG employee.

7. For DISL trial period employees, see Reference (ac).

8. NGA Employees.

a. Conduct themselves, both on and off duty, in a manner that does not reflect adversely on NGA or impact the efficiency of the service. Comply with the standards of conduct in Reference (w) and professional relationships in References (n).

b. Acquaint themselves with the Table of Offenses and Penalties (Enclosure 8). If in doubt of the existence or meaning of an established rule or offense, seek guidance from a supervisor or HD ER Specialist.

c. Acknowledge in writing any disciplinary or adverse action documentation given to them by an issuing supervisor or management official. An employee's failure to sign an acknowledgement does not invalidate the contents of the disciplinary or adverse action documentation. However, the supervisor or management official is required to document that the employee was provided the disciplinary or adverse action documentation and provide the reason the employee's signature was not obtained.

d. Notify the OIG about all conduct that appears to be a violation of federal law; illegal intelligence collection; or fraud, waste, or abuse of government resources. (Reference (m))

e. Notify SISP of any information with a potentially serious significance regarding themselves or other persons who have been granted access to classified information per Reference (l).

ENCLOSURE 3

PROCEDURES

1. A supervisor or management official who discovers or develops information that presents cause for serious concern about an NGA employee's misconduct or failure to improve performance to at least the minimally successful level following an OIP shall promptly refer the matter to the PEB Chair through his/her Office-level management and the SAS.

2. When a disciplinary or adverse action is based on scientific testing results, such as findings of a positive, adulterated, or substituted illegal drug test specimen, and has met the criteria of the Mandatory Federal Drug Testing Guidelines, there will be no deviation from proposed penalties described in Enclosure 8. (Reference (o))

3. Letter of Requirement. The letter of requirement is written counseling, issued to the employee, which places specific requirements on the employee for a specified period. It is commonly used when imposing restrictions on the approval and use of sick leave or unplanned annual leave, but it may be used for other reasons. The HD ER Specialist will coordinate with the SAS and draft the letter of requirement with the following information:

a. The reason for issuance.

b. The specific requirements that the employee must meet and consequences of non-compliance including possible disciplinary or adverse action for failing to meet the requirements.

c. The length of time the requirements will remain in place.

d. The fact that the letter is not a disciplinary action and will not be included in the OPF.

4. Informal Discipline.

a. Oral Admonishment. An oral admonishment is the least severe disciplinary action and consists of a discussion between a supervisor and an employee. It does not require SAS review and is not recorded in the employee's OPF. When issuing an oral admonishment, the supervisor:

(1) Brings the unacceptable behavior to the employee's attention.

(2) Informs the employee that he or she is being admonished.

(3) Explains to the employee what is expected of him or her.

(4) Explains that further disciplinary or adverse action may result if the employee's improper behavior continues.

(5) Explains the admonishment is neither grievable under the Administrative Grievance System (AGS) nor appealable.

Note: Please contact HD ER Specialist for guidance. Although an oral admonishment is not recorded in the employee's OPF, the supervisor should document the facts, issues, and circumstances of the admonishment through a Memorandum for Record and maintain in the supervisory file for 6 months, in accordance with the NGA Records Schedule (Reference (y)).

b. Letter of Caution. The letter of caution is an informal disciplinary action that serves as a warning to the employee that continued misconduct may lead to more serious, formal disciplinary actions. It is not counted as a prior offense in determining a penalty but may be an aggravating factor in determining the remedy should misconduct occur again. The HD ER Specialist will coordinate with the SAS and draft the letter. The supervisor normally signs and issues the letter to the employee, which outlines the inappropriate behavior and:

(1) Explains that the letter of caution is not grievable under AGS.

(2) Requires signature acknowledgement from the employee. If the employee refuses to sign, the supervisor will annotate the date and time that the employee was provided a copy of the letter.

(3) Explains that the letter is not recorded in the employee's OPF but that the supervisor keeps a copy in the supervisory file for 6 months, in accordance with the NGA Records Schedule (Reference (y)). If the employee is reassigned to a new supervisor within that 6-month period, the letter will be forwarded to the new supervisor.

5. Formal Discipline.

a. Formal discipline is a more serious disciplinary action and may require specific documentation using a Personnel Action Request, the Standard Form (SF-50), "Notification of Personnel Action." The SF-50 documents the disciplinary or adverse action and is placed in the employee's OPF and becomes a permanent part of the employee's official employment history with the exception of the letter of reprimand as noted below. A supervisor or management official should ensure the action is fully justified by conducting a thorough investigation to determine and document relevant facts and circumstances.

b. Letter of Reprimand. The HD ER Specialist will coordinate with the SAS and draft the letter. Issued by the supervisor (or other authorized management official), the letter describes the specific, unacceptable behavior and may list the corrective measures to be taken. The SAS retains a copy of the letter in the employee relations file and the

employee's OPF concurrently. The letter remains in the OPF for a period of not less than 1 year, but no more than 2 years. During this period, tThe letter can be counted as a prior offense for determining a remedy if misconduct occurs again. A letter of reprimand is grievable under AGS.

c. Suspension, Reduction in band or pay, or Removal. The SAS reviews and recommends either Path 1 or Path 2:

(1) Path 1 (Non-PEB cases) – Enclosures 4 and 5 – Disciplinary actions for suspension of 5 days or less to include Letters of Caution and Letters of Requirement.

(2) Path 2 (PEB cases) – Enclosures 4 and 6 – Serious disciplinary or adverse actions that include more than 5 days suspension, reduction in band, or pay up to removals.

(3) Suspension is the placement of an employee, after exhausting all existing procedural rights pursuant to NGA policies and procedures, in a temporary non-pay and non-duty status for disciplinary or adverse action reasons. In determining the length of a suspension, supervisors or managers should count calendar days, not work days. A day of suspension is equivalent to 8 hours. Suspensions should normally begin on the 1st regularly scheduled day of the pay period, be taken over consecutive days, and should not be taken over a holiday. The needs of the Agency and office should be considered in scheduling suspensions. A personnel action must be prepared for each suspension and the return to duty. A suspension precludes the employee from working at NGA, even in a volunteer status.

d. Indefinite Suspension. Enclosure 9 for detailed procedures.

e. Enforced Leave. HD and OGC, in coordination from the SAS and PEB if applicable, will collaborate and issue a decision regarding the use of enforced leave on a case-by-case basis considering all applicable laws, regulations, and agency policies.

f. Unacceptable Performance. The requirements stated in Reference (g) must be followed, including completion of an OIP, before initiating an adverse action for unacceptable performance. Employees should be given information regarding the agency's Reasonable Accommodation Program (Reference (p)), if there is reason to believe that the employee may have a medical or mental condition that may impact an employee's ability to perform the essential functions of his or her position.

6. Employees' Rights of Redress.

a. Employees who are suspended for more than 14 days, reduced in band or pay, placed on indefinite suspension, furloughed for 30 days or less, or terminated may appeal those actions to the Merit Systems Protection Board (MSPB) only if the employees are:

(1) Veteran Preference eligibles who have completed 1 year of current continuous service in the same or similar positions at NGA or transferred in from another federal agency, or

(2) Covered by 10 U.S.C. 1612(b), Reference (c). Employees are covered by this citation if:

i. They were converted from the former Defense Mapping Agency to the National Imagery and Mapping Agency (NIMA) at NIMA standup on 1 October 1996, or

ii. They and their positions in an agency other than a DoD intelligence component were converted to NIMA/NGA on or after 1 October 1996, and the employees were entitled to MSPB adverse action appeal rights prior to his/her transfer, and the employees continued his/her NIMA/NGA employment without a break in service.

b. Employees who fall within the coverage of paragraph 6.a. may elect to file an administrative grievance or adverse action appeal, if applicable, instead of an MSPB appeal.

c. Employees who do not fall within the coverage of paragraph 6.a. should refer to References (k) and (ad) for guidance on the administrative grievance or adverse action appeal processes.

7. Due Process.

a. An employee serving a DCIPS trial period is given limited due process for disciplinary and adverse actions during his/her trial period. The limited due process consists of providing the employee written notice of the action to take place and the reason for the action. Standard due process (detailed statement of charges, right to reply, right to review supporting documentation, and notice period) for any type of suspension or termination is not required for trial-period employees. A trial-period employee may not administratively grieve a termination action.

b. Veteran Preference-eligible employees who have completed 1 year of current, continuous service in the same or similar positions (at NGA or previous agency), without a break in service, are entitled to standard due process.

c. All other employees are entitled to standard due process upon completion of his/her DCIPS 2-year trial period.

8. Right to Representation. The employee has a right to representation of his or her choosing. Legal costs are the responsibility of the employee. However, the choice may be denied if it results in a conflict of interest or conflicts with security or mission requirements. For example, the employee's supervisor normally cannot represent the employee. Also, HD, OGC, OIG, and ODE employees are normally excluded from

serving as employee representatives. If the choice is denied, the employee is permitted to make another choice.

9. Special Termination Authority. The Secretary of Defense may terminate the employment of any employee in a defense intelligence position under special guidance outlined in Reference (b).

ENCLOSURE 4

PROCESS FLOW FOR FORMAL DISCIPLINARY OR ADVERSE ACTIONS
SAS AND PEB PROCESS

Process	Responsible Party	
Initiates discipline or adverse actions	Supervisor or management official	
Provides advice and assistance to supervisor	HD Employee Relations (ER) Specialist and SAS	
	Path 1 (Non-PEB cases) - Proposed disciplinary actions 5 days or less suspension (to include ~~Letters of Caution and~~ Letters of Reprimand)	Path 2 (PEB cases) - Proposed serious discipline or adverse actions more than 5 days suspension up to removal
Agency review of proposed discipline decisions	SAS	SAS and PEB
Prepares disciplinary documentation	HD ER Specialist with supervisor	HD ER Specialist with SAS
Proposing Official	Supervisor or manager who initiated action (normally 1st level supervisor)	PEB Chair (HD Deputy Director)
Deciding Official	Supervisor or manager one level above Proposing Official (normally 2nd level supervisor)	HD Director
Agency Grievances/Appeals (Reference [k])	Administrative Grievance System = Supervisor or manager one level above Deciding Official (normally 3rd level supervisor)	Administrative Grievance System (6-14 days suspension) for performance or misconduct = One of the following three personnel: Deputy Executive Director, Associate Director for Support, or Associate Director for Operations as determined by the grievance subject. Adverse Action Appeal (15 days suspension-removal) for performance or misconduct = Executive Director (Employee's NGA Component Director, OGC, and HD advisors)

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ENCLOSURE 5

PATH 1 (NON-PEB CASES) – DISCIPLINARY ACTIONS FOR SUSPENSIONS OF 5 DAYS OR LESS

1. The supervisor or management official seeks advice and assistance from an HD ER Specialist who will coordinate with the SAS and OGC before initiating an informal or formal action.

2. The HD ER Specialist collaborates with the SAS to ensure the disciplinary or adverse action proposed is consistent across the agency based upon historical cases and offenses.

3. Security-related issues are referred back to the Office of Security (SIS), which will assess and forward to PSB as necessary.

4. Following SAS and OGC collaboration, the employee's supervisor or a manager in the employee's chain-of-command (as Proposing Official) signs and issues the ~~Letter of Caution~~ Letter of Reprimand, or the proposal letter (for suspensions of 5 days or less) to the employee.

5. All proposal letters must include the following statements and information:

a. The proposed action, supporting reasons, and factors considered in determining the proposed action.

b. The employee's opportunity to reply orally or in writing within 10 days. However, extenuating circumstances may allow for an extension.

c. The name and contact information of the deciding official to which the employee's response should be directed.

d. The employee's right to review the materials substantiating or supporting the proposal and how to request or obtain these materials.

e. The employee's right to representation.

f. The employee's duty status during the notice period.

6. The second-level supervisor or a manager in the employee's chain-of-command, who is at least one level above the Proposing Official, considers any response submitted by the employee and makes the final decision as Deciding Official. The Deciding Official signs and issues the decision letter to the employee on or before the effective date of the suspension. If the employee is in a non-duty status, the decision letter should be mailed to the employee by both regular mail and overnight delivery service or certified mail, with a return receipt requesting signature.

7. All final written decision letters must include the following statements and information:

a. Whether the employee replied to the proposal letter.

b. What consideration was given to the employee's reply.

c. The disciplinary or adverse action, if any, that was decided upon, the reasons for that decision, and the effective date of the action.

d. The employee's right to file a grievance through the AGS or an Equal Employment Opportunity complaint and the time limits for doing so.

8. The Chief, SAS, provides a copy of any final letters of reprimand and decision letters for suspensions to SISP.

ENCLOSURE 6

PATH 2 (PEB CASES) – SERIOUS DISCIPLINARY OR ADVERSE ACTIONS

1. The supervisor or management official seeks advice and assistance from an HD ER Specialist, who will coordinate with the SAS and OGC before initiating an informal or formal action.

2. The HD ER Specialist collaborates with the SAS to ensure the disciplinary or adverse action proposed is consistent across the agency based upon historical cases and offenses.

3. The SAS considers whether the serious case meets the threshold of more than 5 days' suspension up to removal and forwards to the PEB Chair for a PEB agency board review and discussion.

4. The PEB meets upon a SAS referral. All PEB meetings shall be convened in person or conducted virtually at the discretion of the PEB Chair.

5. The PEB members and advisors review the case and provide advice and assistance to the PEB Chair. The PEB Chair, DD/HD, as the Proposing Official, will make the final determination to propose a written disciplinary or adverse action to the employee. Security related issues are referred to the PSB for review and action.

6. If the adverse action is for a reduction in pay and/or band, the PEB will follow procedures established in Reference (e).

7. All proposal letters (with the exception of letters of caution or letters of reprimand resulting from the PEB) will serve as the advance notice of proposed action to the employee and must include the following statements:

a. The proposed action, supporting reasons, and factors considered in determining the proposed action.

b. The employee's opportunity to reply orally or in writing within 10 days. However, extenuating circumstances may allow for an extension.

c. The name and contact information of the Deciding Official, D/HD, to which the employee's response should be directed.

d. The employee's right to review the materials ~~substantiating or supporting~~ relied upon by the PEB to support the proposal and how to request or obtain these materials.

e. The employee's right to representation.

f. The employee's duty status during the notice period.

8. D/HD will consider any response submitted by the employee and make the final decision as Deciding Official. The Deciding Official will sign, and the Deciding Official or Chief, SAS, will issue the decision letter to the employee on or before the effective date of the suspension. If the employee is on a non-duty status, the decision letter should be mailed to the employee by both regular mail and overnight delivery service or certified mail with a return receipt requesting signature.

a. The effective dates for the final decisions are:

(1) For disciplinary cases (less than 14 days' suspension), the decision can be effected after the employee's reply period and a final decision has been reached.

(2) For adverse action cases (more than 14 days' suspension, removal, reduction in band or pay), the decision cannot be effected until the 31st day from the day the employee received the proposal letter unless 8.b. is applicable.

b. If the agency has reasonable belief that the employee has committed a crime for which a sentence of imprisonment may be imposed, the decision may be effected with a 7-day advance notice period. This crime provision may be imposed even in the absence of judicial action.

9. All decision letters must include the following statements and information:

a. Whether the employee replied to the proposal letter.

b. What consideration was given to the employee's reply.

c. The disciplinary or adverse action, if any, that was decided upon, the reasons for that decision, and the effective date of the action.

d. The employee's right to file a grievance, adverse action appeal, Equal Employment Opportunity complaint, or MSPB appeal.

10. The D/HD will sign the written notice of action (decision letter) for trial period employees.

11. Decisions made through the PEB process on disciplinary or adverse action cases will be properly documented and maintained in accordance with the NGA Records Schedule in Reference (y). The PEB Chair will approve all PEB meeting agendas, minutes, and documented outcomes.

12. The Chief, SAS, provides a copy of any final decision letter (suspensions through removals) from the PEB to SISP.

ENCLOSURE 7

TABLE 1 – SELECTING PENALTIES
INTERRELATIONSHIPS OF KEY FACTORS

Supervisors, management officials, SAS, and PEB will use Table 1 when considering appropriate penalties. This guide shows the interrelationships of the key factors in the penalty selection process, but it neither establishes additional procedural requirements for particular offenses nor automatically sets penalties, unless Table 2 specifies that it is mandatory an employee receives a proposed removal letter. The factors should be considered in the order shown. Information on how a basic penalty was derived and on how favorable elements (mitigating factors) were considered should be maintained. These may be included in the proposal or decision letters and must be available for subsequent use in hearings or other reviews of actions taken. Unfavorable elements (aggravating factors) must be expressly included in the proposal letter.

Step 1 Identify the basic offense and penalty as found in Table 2.	*Step 2* Identify favorable elements (mitigating factors).	*Step 3* Identify unfavorable elements (aggravating factors).	*Step 4* Determine the appropriate penalty.
The basic penalty is the one that would be used if there were no other considerations. It is based on: a. Offense (1) Character (2) Seriousness (3) Consequences (4) Relation to employee's duties, position, and responsibilities b. Rehabilitative potential of penalty. c. Employee willfulness (intentional, technical, inadvertent, committed maliciously or for gain, or was	Favorable elements are considerations that support the imposition of less severe penalties. Included are: a. Situation (1) Possibility of genuine misunderstanding (2) Enticements or provocations (3) Culpability of others (4) Mitigating circumstances b. Employee (1) Length of service (2) Quality of work history	Unfavorable elements are considerations that support more severe action than is usually taken. Included are: a. Past disciplinary actions that may be used as evidence of prior offenses b. Combination of offenses c. Series of offenses d. Nature of other offenses	The penalty assessed results from weighing favorable and unfavorable factors in relationship to the offense. a. The proposed penalty is based on information available at the time of initiation of the action and is specifically stated in the proposal letter. b. The penalty

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frequently repeated). d. Nature of the employee's position (job level, type of employment, including supervisory or fiduciary role, contact with public, prominence of the position, personnel carrying a weapon, etc.). e. Notoriety of the offense or its impact upon the reputation of the agency.	(3) Personal reputation (4) Past contributions (5) Record of cooperativeness (6) Record of achievements	e. Recency of other offenses	decided upon is based on all available information, including the employee's reply to the proposal letter. The penalty decided upon and the effective date are stated in the decision letter.

ENCLOSURE 8

TABLE 2 – TABLE OF OFFENSES AND PENALTIES

e Table of Offenses and Penalties provides a range of discretionary penalties for supervisors, management officials, SAS, and the PEB to use in administering discipline to employees for particular offenses. The table is not intended er every type of offense or nature of offense. Penalties for offenses not listed should be consistent with listed offens comparable gravity.

e recommended penalties listed in this table are a guide with the exception of those penalties listed as "mandatory."

Offense Category	Nature of Offense	First Offense	Second Offense	Third Offens
Attendance-lated Offenses · excessive Absence hout Leave VOL), removal may used when AWOL tus exceeds 5 rkdays. The ployee's lanation must be nsidered.	a. Delay in reporting at scheduled starting time, returning from lunch or break periods, and returning after leaving work station on official business.	a. Oral admonishment up to letter of reprimand	a. Letter of reprimand up to 5-day suspension	a. 3-day suspension u removal
	b. Any absence from the regularly scheduled tour of duty that has not been authorized and/or for which pay must be denied or any absence from management directed additional hours of duty (unauthorized absence). Includes leaving worksite without permission.	b. Letter of caution up to 5-day suspension	b. 1-day suspension up to 14-day suspension	b. 5-day suspension u removal
	c. Failure to follow established leave procedures.	c. Oral admonishment up to 1-day suspension	c. Letter of reprimand up to 1-day suspension	c. 5-day suspension u removal
Breach of Safety	a. Acts that put personnel or property in imminent danger.	a. Letter of reprimand up to removal	a. 30-day suspension up to removal	a. Removal
	b. Failure to report injury or accidents involving managers, self, or coworkers.	b. Oral admonishment up to letter of reprimand	b. Letter of reprimand up to 1-day suspension	b. 1-day suspension u removal

Offense Category	Nature of Offense	First Offense	Second Offense	Third Offens
Breach of Security eferences (l), (t), and)	a. Security incident that does not constitute a violation. Such an incident is identified as an "infraction" or as a "Practice Dangerous to Security (PDS)" (e.g., failure to follow agency regulations in marking and handling classified information and material).	a. Oral admonishment up to letter of reprimand. (Counseling is usually appropriate. Disciplinary action is usually appropriate only for one or more additional infractions or PDSs that occur within a period and warrant some kind of action to correct behavior).	a. Letter of reprimand up to 5-day suspension	a. 3-day to 10 day suspensi
	b. Security violation. The severity of the penalty is based on the employee's intent (knowing, willful, or negligent), damage to U.S. interests, and compromise (unauthorized disclosure of classified information).	b. Letter of reprimand up to removal	b. 1-day suspension up to removal	b. 15-day suspension u removal
	c. Failure to carry or show proper identification on NGA premises.	c. Oral admonishment up to removal	c. Letter of reprimand up to removal	c. 3-day suspension u removal
	d. Selling classified information.	d. Mandatory an employee receives a proposed removal letter.		

Offense Category	Nature of Offense	First Offense	Second Offense	Third Offens
Breach of Security ntinued)	e. Knowingly or willfully causing the compromise of classified information by transmitting that information to unauthorized persons.	e. 30-day suspension up to removal	e. Removal	
	f. Refusal to submit security documents.	f. Mandatory an employee receives a proposed removal letter.		
	g. Intentional false and material statements on personnel security documents or during a security interview.	g. Mandatory an employee receives a proposed removal letter.		
Breach of Privacy[1]))	a. Performing an activity that results in a privacy breach.	a. Letter of reprimand up to removal	b. Letter of reprimand up to removal	b. Letter of reprimand up removal
	b. Displaying a pattern of behavior that demonstrates a disregard for applicable privacy policies.	b. Letter of reprimand up to removal	b. Letter of reprimand up to removal	b. Letter of reprimand up removal
	c. Completing or attempting to complete an action that knowingly would result in a privacy breach.	c. 30-day suspension up to removal	c. 30-day suspension up to removal	c. 30-day suspension u removal

each is defined as "an actual event involving an individual gaining unauthorized access to personally identifiable information and using it for uthorized purposes."

Offense Category	Nature of Offense	First Offense	Second Offense	Third Offens
Computer Misuse (References (z) and (aa))	a. Intentionally using Government property for personal gain.	a. Letter of caution up to 10-day suspension	a. 5-day suspension up to 30-day suspension	a. Removal
	b. Deliberately using NGA-sponsored computer equipment to access, download, copy, send, or store pornographic or sexually explicit sites, images, or materials.	b. 5-day suspension up to removal	b. Removal	
	c. Unauthorized or excessive use of duty time accessing websites or e-mail not related to the employee's duties.	c. Oral admonishment up to letter of reprimand	c. Letter of reprimand up to 14-day suspension	c. 15-day suspension u removal
	d. Disseminating, downloading, or accessing inappropriate, offensive or unauthorized material from a website or e-mail source.	d. Letter of caution up to 5-day suspension	d. 1-day suspension up to removal	d. 15-day suspension u removal
	e. Dispatching unauthorized official comments on behalf of NGA to any website or fraudulently representing oneself as an authorized NGA spokesperson.	e. Letter of reprimand up to 10-day suspension	e. 5-day suspension up to removal	e. Removal

Conduct becoming a deral Employee cludes violation of deral Administrative es, Executive ders, and NGA tructions, Manuals, d other agency ulations; and other nduct prejudicial to government)	a. Failure to follow agency policies and procedures, e.g., time and attendance.	a. Oral admonishment up to removal	a. 1-day suspension up to removal	a. 5-day suspension u removal
	b. Unprofessional relationships that impede the efficiency of the Agency or adversely affect mission performance (see Reference m).	a. Oral admonishment up to removal	b. 1-day suspension up to removal	c. 5-day suspension u removal
	c. Immoral, indecent, or disgraceful conduct displayed by an employee.	c. Letter of reprimand up to removal	c. 5-day suspension up to removal	c. Removal
	d. Damage to another employee's personal property on a Government facility.	d. Letter of caution up to 2-day suspension	d. 1-day suspension up to 10-day suspension	d. 10-day suspension u removal
	e. Solicitation or acceptance of anything of monetary value from a person who is seeking personal or professional favors, contracts, or other business for financial or individual gains.	e. 5-day suspension up to removal	e. Removal	

Conduct becoming a deral Employee ntinued)	f. Off-duty misconduct that adversely affects or impacts the reputation of the employee or reflects unfavorably on the Federal service or NGA.	f. Letter of reprimand up to removal	f. 15-day suspension up to removal	f. Removal
	g. Employee arrested on charges of a criminal offense with maximum penalty greater than 1 year in prison.	g. Indefinite Suspension (see Enclosure 9) up to removal	g. Mandatory an employee receives a proposed removal letter.	
	h. Sleeping or loafing on the job, failure to perform assigned work h. (1) No endangerment of safety	h. (1) Oral admonishment up to letter of reprimand	h. (1) Letter of reprimand up to 14-day suspension	h. (1) 10-day suspension u removal
	h. (2) Endangerment of safety	h. (2) 1-day suspension up to removal	h. (2) 10-day suspension up to removal	h. (2) Remov
	i. Lack of Candor	i. Oral admonishment up to removal	i. 1-day suspension up to removal	i. 5-day suspension u removal
Constitutional ghts	Violation of an employee's constitutional rights, e.g., religious affiliations, freedom of speech, and membership in associations.	Letter of reprimand up to removal	10-day suspension up to removal	Removal

Discourtesy, Disrespectful Conduct, or Creating Disturbance	a. Demonstrating and displaying acts of rudeness toward a coworker.	a. Oral admonishment up to letter of reprimand	a. Letter of reprimand up to 5-day suspension	a. 1-day suspension u removal
	b. Insubordination, refusal to obey orders, defiance of authority, disregard of directive, impertinence.	b. Letter of reprimand up to removal	b. 1-day suspension up to removal	b. 14-day suspension u removal
	c. Use of insulting, abusive, and obscene language and gestures (nondiscriminatory).	c. Letter of caution up to 3-day suspension	c. Letter of reprimand up to 10-day suspension	c. 3-day suspension u removal
	d. Use of insulting, abusive, obscene language or gestures to or about a supervisor or management official.	d. Letter of reprimand up to 5-day suspension	d. 1-day suspension up to 14-day suspension	d. 10-day suspension u removal
	e. Consistently creating disturbances that cause the decline of morale and/or work production.	e. Letter of caution up to 5-day suspension	e. Letter of reprimand up to removal	e. 10-day suspension u removal

Discrimination sed on race, color, , religion, ndicap, age, ional origin, rital status, itical affiliations, ual orientation	a. Prohibited discriminatory practices in any aspect of hiring or work practices, e.g., employment, performance appraisal, career development, or training.	a. 10-day suspension up to removal	a. 30-day suspension up to removal	a. Removal
	b. Prohibited derogatory accusations and practices against an employee's race, color, religious affiliation, age, national origin, sexual orientation, gender, or physical disability.	b. 10-day suspension up to removal	b. 30-day suspension up to removal	b. Removal
	c. Failure to prevent or curtail discrimination toward a subordinate when the supervisor knew or should have known of the discrimination.	c. 10-day suspension up to removal	c. 30-day suspension up to removal	c. Removal
	d. Display or dissemination of inappropriate material, e.g., crude jokes or cartoons related to one or more issue in 9.b above.	d. Reprimand up to removal	d. 1-day suspension up to removal	d. 15-day suspension u removal

Discrimination sed on race, color, , religion, ndicap, age, ional origin, rital status, itical affiliations, ual orientation ntinued)	e. Deliberate, intentional, or slanderous comments regarding the known or unknown sexual orientation of a coworker, supervisor, or subordinate.	e. 10-day suspension up to removal	e. 30-day suspension up to removal	e. Removal
Alcohol Use	a. Unauthorized possession of alcohol on NGA premises.	a. Letter of reprimand up to 5-day suspension	a. 5-day suspension up to removal	a. 14-day suspension u removal
	b. Unauthorized use of alcohol on NGA premises.	b. 10-day suspension up to 30-day suspension	b. 30-day suspension up to removal	b. Removal
	c. Reporting to work impaired by alcohol.	c. 1-day suspension up to 30-day suspension	c. 5-day suspension up to removal	c. 30-day suspension u removal
Drug Use eference (o))	a. Reporting to work impaired by illegal drugs.	a. Mandatory an employee receives a proposed removal letter.		
	b. Unauthorized possession or use of illegal drugs or controlled substances.	b. Mandatory an employee receives a proposed removal letter.		
	c. Sale or transfer of drugs or of a controlled substance.	c. Mandatory an employee receives a proposed removal letter.		

	d. Positive drug test results for illegal drugs or controlled substances without a prescription.	d. Mandatory an employee receives a proposed removal letter.		
	e. Refusing to take a random drug test, or tampering with drug test specimen.	e. Mandatory an employee receives a proposed removal letter.		
False or ccurate tements	a. False statements, inaccuracies, misrepresentation, or fraud in entitlements (includes falsifying or inaccurately reporting information on a time card, leave form, travel voucher or other document pertaining to entitlements).	a. Letter of reprimand up to removal	a. 5-day suspension up to removal	a. 30-day suspension u removal
	b. Inaccuracies, misrepresentation or fraud in time and attendance time cards or leave forms (over a 12-month period).	See Reference (ae) for guidance		
	c. Knowingly making false or inaccurate statements against coworkers, supervisors, subordinates, or Government officials that result in harming or destroying the reputation, authority, or official standing of an individual or organization.	c. Letter of reprimand up to removal	c. 5-day suspension up to removal	c. 30-day suspension u removal

False or ccurate ıtements ntinued)	d. False or inaccurate statements in electronic or paper documents describing qualifications or other personal information submitted in assignment or promotion process (if falsification would have altered employment decision or negatively impacts security clearance, removal is appropriate for first offense.	d. Letter of reprimand up to removal	d. 14-day suspension up to removal	d. 30-day suspension u removal
	e. Deliberate misrepresentation of material facts, inaccuracies, concealment, willfully and knowingly withholding of a material fact (includes perjury, making false sworn statements, and knowingly making material false statements to a supervisor).	e. Letter of reprimand up to removal	e. 15-day suspension up to removal	e. Removal
Fighting or ɛating Disturbance	a. Creating a disturbance impacting morale or production.	a. Oral admonishment up to 5-day suspension	a. Letter of reprimand up to removal	a. 10-day suspension u removal
	b. Threatening or attempting to inflict bodily harm with or without bodily contact.	b. Oral admonishment up to 5-day suspension	b. Letter of reprimand up to 10-day suspension	b. 10-day suspension u removal

Fighting or ɛating Disturbance ntinued)	c. Hitting, pushing, or other acts that do not result in bodily injury.	c. Letter of reprimand up to 30-day suspension	c. 15-day suspension up to removal	c. Removal
	d. Hitting, pushing, or other acts that result in bodily injury.	d. 14-day suspension up to removal	d. Removal	
	e. Threatening or attempting to inflict bodily harm on a supervisor.	e. 30-day suspension up to removal	e. Removal	
Gambling	Promotion of or gambling on NGA premises, including the promotion of or participation in professional, collegiate, private, or office-wide sports pools or lotteries. The only exception is lottery tickets sold at NCE as authorized by the Agency.	Oral admonishment up to letter of reprimand	Letter of reprimand up to 5-day suspension	3-day suspension u removal
Indebtedness	Intentionally failing to honor valid personal debts (includes alimony and child support payments).	Oral admonishment up to 5-day suspension	Letter of reprimand up to 14-day suspension	5-day suspension u removal
Job Actions	Participating in or promoting strikes, sick-outs, or any actions that cause termination or slowing of work or production.	Mandatory an employee receives a proposed removal letter.		

Misappropriations	a. Directing or rendering services that are not covered by appropriations.	a. Letter of reprimand up to removal	a. Mandatory an employee receives a proposed removal letter.	
	b. Performing services for personal financial gain (i.e., receiving personal payment for editing a coworker's resume while on duty).	b. Removal		
	c. Intentional failure to deposit or repay Treasury funds for salary overpayment, travel advances, or tuition assistance.	c. Removal		
	d. Embezzlement of Government funds for personal gain or use.	d. Removal		
Misuse of vernment Property nalty depends on ue of property or ount of employee e involved and, sition held by the ender, which may tate a higher ndard of conduct)	a. Intentional loss of or damage to Government property, vehicles, records, or informational databases.	a. Letter of reprimand up to removal	a. Mandatory an employee receives a proposed removal letter.	
	b. Unauthorized use of Government property for unofficial or personal purposes.	b. Letter of reprimand up to removal	b. 5-day suspension up to removal	b. Removal

Misuse of vernment Property ntinued)	c. Misuse of Government credentials.	c. Oral admonishment up to 1-day suspension	c. Letter of reprimand up to 14-day suspension	c. 10-day suspension u removal
	d. Reckless driving of Government motor vehicles and reckless use of property.	d. Letter of reprimand up to removal	d. 10-day suspension up to removal	d. 30-day suspension u removal
	e. Willfully using or authorizing the use of a Government passenger motor vehicle or aircraft for other than official purposes.	e. Mandatory an employee receives a 30-day suspension up to removal proposal letter.	e. Removal	
Partisan Political iliations	a. Violation of prohibition against campaigning for or influencing partisan elections.	a. Letter of reprimand up to removal	a. 15-day suspension up to removal	a. Removal
	b. Violation of prohibition against soliciting partisan political contributions.	b. Letter of reprimand up to removal	b. 15-day suspension up to removal	b. Removal
Refusal to Testify, erference or struction of stimony or estigations	a. Refusal to testify or cooperate in an authorized inquiry or investigation.	a. 1-day suspension up to removal	a. 10-day suspension up to removal	a. Removal
	b. Attempting to influence or to alter testimony of witnesses or participants.	b. 10-day suspension up to removal	b. 30-day suspension up to removal	b. Removal
	c. Attempting to impede investigation or to influence investigating officials.	c. 10-day suspension up to removal	c. 30-day suspension up to removal	c. Removal

Reprisal	a. Deliberate interference with an employee's exercise of his or her right, or reprisal against an employee for exercising his or her right, to grieve, appeal, or file a complaint through established procedures.	a. 10-day suspension up to removal	a. 30-day suspension up to removal	a. Removal
	b. Reprisal against an employee for making a Protected Disclosure as defined in PPD 19. (Reference (d))	b. 10-day suspension up to removal	b. 30-day suspension up to removal	b. Removal
Sexual rassment	Influencing, offering to influence the career, pay, job, or work assignment of another person in exchange for sexual favors; or deliberate or repeated physical contacts, comments, or gestures of a sexual nature. (Reference (r))			
	a. Involving a subordinate.	a. 10-day suspension up to removal	a. 30-day suspension up to removal	a. Removal
	b. Not involving a subordinate.	b. Letter of reprimand up to 30-day suspension	b. 10-day suspension up to removal	b. 30-day suspension u removal

Soliciting and cepting Gifts	a. Soliciting contributions from other Government officers, subordinates, or coworkers for gifts to present to those in official supervisory positions within NGA and externally.	a. 30-day suspension up to removal	a. Removal	
	b. Accepting gifts or presents offered or presented as contributions from persons in Government receiving less pay.	b. 30-day suspension up to removal	b. Removal	
Stealing, Theft, or authorized ssession of operty	Stealing (actual or attempted) or unauthorized possession of Government property or property of coworkers or collusion with others to commit such acts.	Letter of reprimand up to removal	30-day suspension up to removal	Removal
Travel Card suse	Misuse of Government-sponsored travel charge card by using the card for personal or other inappropriate use, including cash advances or charges when travel is not authorized, failure to pay charge card bill, or pay in a timely manner.	Oral admonishment up to removal	5-day suspension up to removal	10-day suspension u removal

Purchase Card suse te: Requires specific narks on the rsonnel Action quest	Unauthorized use of or failure to appropriately control use of Government purchase charge card as a cardholder, or approving official responsible for use or oversight of the card.	Oral admonishment up to removal	14-day suspension up to removal	30-day suspension u removal
Violating Traffic gulations	Reckless driving on NGA premises, improper operation or parking of a motor vehicle on NGA premises.	Oral admonishment up to 1-day suspension	Letter of reprimand up to 10-day suspension	5-day suspension u removal
Careless or fective rkmanship	a. Where waste or cost is not substantial.	a. Oral admonishment up to 1-day suspension	a. Letter of reprimand up to 3-day suspension	a. 3-day suspension u removal
	b. Where waste or cost is substantial.	b. Letter of reprimand up to removal	b. 14-day suspension up to removal	b. 30-day suspension u removal
Failure to Meet ndition of ployment	a. Failure to meet condition of employment (i.e., maintain security clearance, certification, etc.).	a. Mandatory an employee receives a proposed removal letter.		

ENCLOSURE 9

INDEFINITE SUSPENSION

1. An indefinite suspension is an adverse action and is imposed, like other adverse actions, after the appropriate notice period. An indefinite suspension places an employee in a temporary status pending investigation, inquiry, or further Agency action. The indefinite suspension continues for an indeterminate period of time and ends with the conclusion of the pending conditions in the notice of action, which may include the completion of subsequent administrative action. An indefinite suspension must not be used for misconduct, but *is* used:

a. When an agency has reasonable cause to believe an employee has committed a crime for which a sentence of imprisonment could be imposed pending the outcome of a criminal proceeding;

b. When an agency has legitimate concerns that an employee's medical condition makes his/her continued presence in the workplace dangerous or inappropriate, pending a determination that the employee is fit for duty; or

c. When an agency has suspended an employee's access to classified information.

2. The Proposing Official (PEB Chair) and the Deciding Official (D/HD) will make the final recommendation and decision for each individual case.

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Appx212

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CENTRAL REGIONAL OFFICE

CHRIS J. KROENUNG,
Appellant,

v.

DEPARTMENT OF DEFENSE,
Agency.

DOCKET NUMBER
CH-0752-23-0234-I-1

DATE: May 3, 2023

ORDER AND SUMMARY OF STATUS CONFERENCE

On May 2, 2023, I held a status conference with the parties. The appellant, an Aeronautical Analyst with the National Geospatial-Intelligence Agency, filed an appeal with the Board challenging his removal for conduct unbecoming a federal employee after having failed to comply with the agency's COVID-19 testing program.

The parties will engage in settlement discussions to determine whether resolution of the appeal is possible. Discovery and further deadlines will be stayed pending the parties' settlement efforts.

To monitor the parties' progress, I will hold a status conference on **May 23, 2023**, at **9:00 a.m., CDT.** To join the conference, you must call **1-800-793-9878**, and at the prompt enter Participant Code **1233106**.

FOR THE BOARD: /S/
David R. Lidow
Administrative Judge

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CENTRAL REGIONAL OFFICE

CHRIS J. KROENUNG,
Appellant,

v.

DEPARTMENT OF DEFENSE,
Agency.

DOCKET NUMBER
CH-0752-23-0234-I-1

DATE: May 26, 2023

ORDER AND SUMMARY OF STATUS CONFERENCE

On May 23, 2023, I held a status conference with the parties. The parties reported that although they have engaged in preliminary settlement discussions, there has been no agreement reached to date. I have asked Judge Kern of the Board's Central Regional Office to serve as a mediator for the parties' ongoing settlement discussions. Judge Kern will contact the parties to schedule a settlement conference.

Discovery and further deadlines will be stayed pending the parties' settlement efforts. To monitor the parties' progress, I will hold a status conference on **June 12, 2023, at 9:00 a.m., CDT**. To join the conference, you must call **1-800-793-9878**, and at the prompt enter Participant Code **1233106**.

FOR THE BOARD:

_____/S/
David R. Lidow
Administrative Judge

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CENTRAL REGIONAL OFFICE

CHRIS J. KROENUNG,
Appellant,

v.

DEPARTMENT OF DEFENSE,
Agency.

DOCKET NUMBER
CH-0752-23-0234-I-1

DATE: July 10, 2023

ORDER AND SUMMARY OF STATUS CONFERENCE

On June 30, 2023, I held a status conference with the parties. The parties reported that they continue to work with Judge Kern to resolve this appeal.

To monitor their progress, I will hold another status conference on **July 21, 2023, at 10:00 a.m., CDT**. To join the conference, you must call **1-800-793-9878**, and at the prompt enter Participant Code **1233106**.

FOR THE BOARD:

_____/S/
David R. Lidow
Administrative Judge

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CENTRAL REGIONAL OFFICE

CHRIS J. KROENUNG,
Appellant,

v.

DEPARTMENT OF DEFENSE,
Agency.

DOCKET NUMBER
CH-0752-23-0234-I-1

DATE: September 1, 2023

ORDER AND SUMMARY OF STATUS CONFERENCE

On August 30, 2023, I held a status conference with the parties. The parties reported that they have been unable to reach a settlement at this time, and asked that case processing be resumed. I asked that appellant's counsel participate at our next status conference scheduled for **September 7, 2023**, at **9:00 a.m., CDT.** To join the conference, you must call **1-800-793-9878**, and at the prompt enter Participant Code **1233106**.

FOR THE BOARD: /S/
David R. Lidow
Administrative Judge

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CENTRAL REGIONAL OFFICE

CHRIS KROENUNG,
Appellant,

v.

DEPARTMENT OF DEFENSE,
Agency.

DOCKET NUMBER
CH-0752-23-0234-I-1

DATE: November 14, 2023

ORDER AND SUMMARY OF STATUS CONFERENCE

On November 14, 2023, I held a status conference with the parties. The parties reported that they have been unable to reach a settlement agreement at this time, and asked that a hearing be scheduled in this matter. I asked the parties to submit a joint notice of hearing availability, selecting a two-day window during the week of January 15, 2024, to conduct the hearing via videoconference. The joint notice should be filed by **November 21, 2023**.

The appellant will provide this information to his counsel, Mr. Lloyd, who should register with the Board's new e-appeal system as soon as possible. If the parties would like to reengage in settlement discussions, they should submit a request for status conference.

FOR THE BOARD:

David R Lidow
_____
David Lidow
Administrative Judge

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CENTRAL REGIONAL OFFICE

CHRIS J. KROENUNG,
Appellant,

v.

DEPARTMENT OF DEFENSE,
Agency.

DOCKET NUMBER
CH-0752-23-0234-I-1

DATE: December 4, 2023

ORDER AND NOTICE OF HEARING, STATUS CONFERENCE, AND PREHEARING CONFERENCE

The hearing in this appeal will be held:

Date:	**January 17, 2024**
Time:	**8:30 AM CT**
Web Conference:	**www.zoomgov.com**
	Meeting ID 160 686 3534
	Passcode 733265
	Direct link:
	https://mspb.zoomgov.com/j/1606863534?pwd=TGxraWlDQnJvUi9odnBwdEMwUzNtdz09

If the appellant fails to appear without good cause, the appeal will be decided without a hearing. If the agency representative fails to appear, the hearing will, absent extraordinary circumstances, proceed as scheduled.

PREHEARING CONFERENCE

The parties are ORDERED to participate in a prehearing conference. The prehearing conference will be held:

Date:	**January 12, 2024**
Time:	**9:00 AM, CT**
Telephone Number:	**1-347-690-2327**
Participant Code:	**845 074 60 #**

Since I will discuss settlement options during this conference, representatives must have the authority to settle this appeal or be able to reach the person with that authority on short notice. We may include that person in the conference discussions if I deem it necessary.

PREHEARING SUBMISSIONS

I **ORDER** the agency and the appellant to file the following to be received in this office on or before January 9, 2024:

(1) A statement of facts and issues (the appellant must include any and all defenses);

(2) A list of all agreed upon material facts;

(3) A list of witnesses with a detailed summary of the expected testimony of each witness showing that the testimony will tend to prove or disprove a fact significant to the case. Testimony that is irrelevant, immaterial, or unduly repetitious will be excluded. See 5 C.F.R. § 1201.41(b)(10). The summary should include each witness's first and last name, job title and work location if the witness is a federal employee, and relationship to the appellant and the facts at issue; and

(4) A copy of exhibits accompanied by an index identifying the documents. You must separately mark for identification every document in the lower right hand corner. The appellant must mark exhibits by letter, the agency by number. Each exhibit exceeding 10 pages in length must be paginated. Documents

previously submitted to the Board by either party are already a part of the record and are not to be offered as exhibits. **No binders or notebooks will be accepted.**

WITNESSES

The agency must provide for the appearance of its employees who are approved as witnesses; thus no subpoenas for them are necessary. If necessary, I will assist you in arranging for the appearance of employees of any other Federal agency or individuals not employed by the federal government. This assistance may include ordering an agency to make the witness available or issuing a subpoena. To be timely, a motion for subpoena must be received in this office on or before January 9, 2024. The requesting party is responsible for serving the subpoena and for paying appropriate witness fees.

COMMUNICATIONS DURING HEARING

Absent express approval from the administrative judge, no two-way communications devices may be operated and/or powered on in the hearing room; all cell phones, text devices, and all other two-way communications devices shall be powered off in the hearing room. Further, no cameras, recording devices, and/or transmitting devices may be operated, operational, and/or powered on in the hearing room. If the hearing is being held by telephone, the same rules apply, modified as appropriate to the circumstances. Failure to abide by these rules may result in the imposition of sanctions, up to and including removal of the offending individual from the hearing room or stopping the hearing. *See* 5 C.F.R. § 1201.43.

FOR THE BOARD:

David R Lidow

David Lidow
Administrative Judge

CHRIS J. KROENUNG v. DEPARTMENT OF DEFENSE

Docket # CH-0752-23-0234-I-1

Response to 01 09 2024 Prehearing Submissions

Online Interview

1. What is the title of the MSPB notice or order to which you are responding?

Prehearing Submissions

---

2. What is the date of that notice or order?

12/04/2023

---

3. Does your pleading assert facts that you know from your personal knowledge?

Yes

---

4. Do you declare, under penalty of perjury, that the facts stated in this pleading are true and correct?

Yes

---

1. Testing is discriminatory. Testing only "unvaccinated" is not only unfair it has been widely proven that all three of the vaccines have low efficacy rates and are practically ineffective within six months or less. Most people started getting "vaccinated" back in February of 2021 which would mean most of the "vaccines" would be ineffective sometime between August and January 2022. Also there have been many "breakthrough" cases which proves that testing less than 10% of the workforce is ineffective, a waste of time and a waste of money.

2. The current presidential administration, and OPM, recommended starting testing on Feb 15, 2022. NGA began testing on Dec 13, 2021. Why was this done? Why the Rush? Moving this date makes no sense and shows that the current NGA administration only wants 100% compliance for the "vaccine".

3. I requested to take sick leave for the time that I was out and I was denied. I requested to take Annual leave during this time and was denied. I requested to telework during this time and was denied. I also requested LWOP and was denied. Why deny people leave if this "pandemic" is so serious? This is an abuse of authority to try to coerce NGA employees to take an experimental "vaccine" against their will.

4. Forced testing and "vaccination" is a violation of the ADA. Any medical examination must be job related, consistent with business necessity, and conducted by a health care professional. Since we should have leave, teleworking and LWOP available the covid testing does not meet the business necessity requirement, and I do not see any way that participating in experimental covid testing is job related. I know the EEOC has approved testing and glossed over the ADA but the ADA was voted on by congress the EEOC are not elected officials and should not be interpreting law without some level of judicial oversight.

5. The omicron variant presented itself in November of 2021. The Omicron variant is a very weak variant that removes a good portion of the "danger" that "vaccination" and covid testing are supposed to prevent. How much longer will this "pandemic" go on? How long will NGA employees have to test for a virus that is no more dangerous than the common cold?

6. CDC guidelines for medium and high levels are to get tested if you have symptoms and to stay up to date with covid "vaccines". These recommendations are not being followed by NGA. Why the contradiction? NGA claims to follow CDC guidelines as a reason for the restrictions?

7. CDC guidelines changed on Aug. 11, they claimed you could no longer differentiate based on vaccination status(because the vaccinated can get the virus and can transmit the virus). The Safer Federal Workforce Taskforce required all government agencies to change their policies to reflect this guidance. To this day DOD policy has not changed. Several Agencies have changed their policies to reflect the new CDC guidelines USDA, GSA, and HHS to name a few. The fact is the CDC has known this that the vaccinated can contract the virus and transmit the virus for a long time.

CHRIS J. KROENUNG v. DEPARTMENT OF DEFENSE

Docket # CH-0752-23-0234-I-1

Response to 01 09 2024 ORDER AND NOTICE OF

Online Interview

1. What is the title of the MSPB notice or order to which you are responding?

ORDER AND NOTICE OF HEARING, STATUS CONFERENCE AND PREHEARING CONFERENCE

---

2. What is the date of that notice or order?

12/04/2023

---

3. Does your pleading assert facts that you know from your personal knowledge?

Yes

---

4. Do you declare, under penalty of perjury, that the facts stated in this pleading are true and correct?

Yes

MSPB Hearing Witness List

Vietta S Williams-NGA Director of HD

1. I would like her to testify as to why I was not allowed to take annual sick or leave without pay.
2. Also, I would like her to explain why she said she need the supervisors to comply
3. And why I was not allowed to telework or move to an area that I can telework

Justin Nahlik-NGA Aero Branch Chief

1. Would like him to testify as to his training to determine if covid tests are reliable and accurate, also to ask him if I was ever offered teleworking sick/annual leave or leave without pay until the pandemic is over.

Mike Glascock-NGA Aeronautical Analyst

1. He will testify as to the inconsistencies of the testing process the holiday open house wherein people were allowed in the building without proof of vaccination or negative testing.
2. Will also testify regarding the fact that other aero analysts that did not test were allowed in the building and were also allowed to telework and use leave when requested as I was not.

Andrew Katze-NGA Aero Branch Chief

1. Will testify regarding aero management attitude towards making accommodations for those that refuse to test and how employees that refuse to test were mocked and ridiculed behind closed doors.
2. He will also testify about the fact that he was allowed to test from home and use a family member as a witness.

Don Leggins- NGA Aero Employee

1. Don was not an aero analyst but worked in Aero in an IT capacity. He will testify as to whether or not he was transferred to a work role so that he could telework while he was refusing to test for Covid 19 and to how he was given accommodations that I was not.

Brent Markem-NGA Deputy Director

1. Would like to ask Mr. Markum if there ever was a vaccine or test for covid that was FDA approved.
2. Also would like to ask why unvaccinated were still asked to test when the CDC and the Safer Federal workforce taskforce informed them that they could not differentiate between the vaccinated and unvaccinated

3. Would also like to testify as to why people were allowed to enter the building, for a open house in December of 2022, without proof of vaccination or a covid test when unvaccinated federal employees were required to do so.

CHRIS J. KROENUNG v. DEPARTMENT OF DEFENSE

Docket # CH-0752-23-0234-I-1

Response to 01 09 2024 Order and Notice of Hearing, Status Conference, and Prehearing Conference

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CHRIS J. KROENUNG v. DEPARTMENT OF DEFENSE

Docket # CH-0752-23-0234-I-1

Response to 01 09 2024 Order and Notice of Hearing,

Online Interview

1. What is the title of the MSPB notice or order to which you are responding?

Order and Notice of Hearing, Status Conference, and Prehearing Conference

---

2. What is the date of that notice or order?

12/04/2023

---

3. Does your pleading assert facts that you know from your personal knowledge?

Yes

---

4. Do you declare, under penalty of perjury, that the facts stated in this pleading are true and correct?

Yes

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CENTRAL REGIONAL OFFICE

CHRIS J. KROENUNG, Appellant, v. DEPARTMENT OF DEFENSE, Agency.	}	DOCKET NUMBER CH-0752-23-0234-I-1 DATE: January 9, 2024

AGENCY'S PREHEARING SUBMISSIONS

Statement of Facts and Issues

I. Statement of Facts

The Agency is willing to stipulate to the following facts:

1. Prior to March 4, 2023, Appellant was employed as an Aeronautical Analyst, IA-03, within the Department of Defense's National Geospatial-Intelligence Agency (NGA) (Initial Agency File (IAF) pg.18, 37).
2. The Appellant remained unvaccinated from the COVID-19 virus throughout his employment with the NGA.
3. In accordance with "Force Health Protection Guidance (Supplement 23) Revision 3 - Department of Defense Guidance for Coronavirus Disease 2019 Vaccination Attestation, Screening Testing, and Vaccination Verification, 20 December 2021," (hereinafter "FHP Guidance, dated 20 Dec. 2021") and "Supplemental Guidance for Implementing Mandatory COVID-19 Vaccination Attestation, Screening Testing, and Vaccination Verification of DoD Civilian Employees for the DoD Fourth Estate -Revision 3, 10 January 2022," all federal employees, to include NGA employees, who are not fully

vaccinated for COVID-19 are required to provide documentation of a negative COVID-19 test when reporting to their worksite (IAF pg. 64, 69, 89).

4. FHP Guidance, dated December 20 2021, Attachment 7, states "DoD Components may bar DoD civilian employees who refuse required screening testing from their worksites on the installation or facility to protect the safety of others…" (IAF, pg. 90).
5. In accordance with Consolidated Department of Defense Coronavirus Disease 2019 Force Health Protection Guidance – Revision 2, COVID-19 testing was required for unvaccinated DoD civilian employees to enter a DoD facility when the CDC COVID-19 Community Transmission level is high or medium in the county where the DoD facility is located (Agency Exhibit 1, pg. 1).
6. On January 3, 2022, Appellant arrived for duty without a negative COVID-19 test despite his status as an unvaccinated employee. Appellant was reminded of the testing requirement but refused to provide a COVID-19 test and expressed his belief that the testing program was an illegal order. Management provided Appellant with information regarding requesting a reasonable accommodation (IAF, pg. 62).
7. On February 17, 2022, Appellant received a Letter of Reprimand for refusing to comply with the Agency's COVID-19 testing program on January 3, 2022 (IAF, pg. 57-60). The Letter of Reprimand stated that the Appellant had seven (7) calendar days from the date of the Letter of Reprimand to comply with the Agency's testing program. Furthermore, management once again provided Appellant with information regarding a reasonable accommodation for religious or medical reasons (IAF, pg. 58).

8. By February 24, 2022, Appellant failed to comply with the Agency's testing program within seven (7) calendar days from the date of the Letter of Reprimand as instructed in the Letter of Reprimand (IAF, pg. 51).
9. Additionally, Appellant notified his supervisor that he did not intend to submit to testing and therefore did not intent to come to work the weeks of March 1, 2022 and March 7, 2022 (IAF, pg. 51).
10. Appellant received a 10-day suspension effective July 18, 2022 for refusing to comply with the Agency's COVID-19 testing program on February 24, 2022, March 1, 2022, and March 7, 2022 (IAF, pg. 42-45; 50-54).
11. On August 1, 2022, Appellant emailed his supervisor, Justin Nahlik, acknowledging that the community level was "high" and requested to use annual leave, sick leave, or telework (Agency Exhibit 4, pg. 1-2). Mr. Nahlik replied stating that he would approve his unscheduled leave request for the week of August 1-August 5, 2022. Mr. Nahlik further stated that his ongoing absences were not sustainable and that this approval would be the last unplanned leave he would approve for Appellant (*Id.*)
12. In anticipation of Appellant returning to work the following Monday, August 8, Mr. Nahlik informed Appellant that if community levels still dictated testing at the time of his return, he was expected to furnish proof of a negative test (*Id.*) Mr. Nahlik once again provided Appellant with the contact information to seek a reasonable accommodation (*Id.*)
13. On August 8, 2022, the CDC reported a "high" community transmission rate (Agency Exhibit 2, pg. 1).

14. On August 8, 2022, Appellant emailed his supervisor informing him that he was refusing to submit to COVID-19 testing and requested telework or leave. The supervisor denied his request for unscheduled annual leave and indicated that he was placing Appellant on administrative leave pending further disciplinary action. (Agency Exhibit 5, pg. 1-2).
15. On August 15, 2022, the CDC reported a "medium" community transmission rate (Agency Exhibit 3).
16. On August 15, 2022, Appellant once again emailed his supervisor to inform him that he refused to comply with testing (Agency Exhibit 6, pg. 1).
17. Mr. Nahlik contacted the Employee Relations team to initiate the disciplinary process outlined in NGA Manual No. 1455.1 (IAF, pg. 133-174).
18. On October 24, 2022, Jo-Ellen Adkins, Deputy Director of Human Development, issued to Appellant Notice of Proposed Removal for Conduct Unbecoming a Federal Employee after the employee refused to comply with the Agency's COVID-19 testing program on August 8, 2022 and August 15, 2022 (IAF, pg. 37-40).
19. On November 4, 2022, Appellant submitted his reply to the proposed removal to the deciding official, Vietta Williams, which consisted of a copy of the same email he submitted in June 2022 in reply to the proposed 10-day suspension claiming that the testing program was ineffective and unlawful (*see* Initial Appeal, pg. 5; IAF, pg. 33-35).
20. On February 28, 2023, Vietta Williams, Director of Human Development, issued to Appellant Notice of Decision to Remove effective March 4, 2023 (IAF, pg. 20-22).
21. On March 4, 2023, Appellant was removed from his position (IAF, pg. 18).

II. Statement of Issues

Whether the basis for Appellant's removal is supported by a preponderance of the evidence and whether removal promotes the efficiency of the service.

III. Analysis

The evidence of record contained in the IAF and the attached Agency Exhibits show that the Agency established by preponderant evidence that Appellant failed to comply with required weekly COVID-19 testing during the weeks of August 8, 2022 and August 15, 2022 thereby engaging in Conduct Unbecoming a Federal Employee. It is undisputed that Appellant was an unvaccinated individual. It is further undisputed that Agency policy required unvaccinated employees to undergo COVID-19 testing prior to entering the workplace when CDC community transmission levels were "medium" or "high" (Agency Exhibit 1, pg. 1).

During the weeks of August 8, 2022 and August 15, 2022. CDC community transmission levels for the Appellant's workplace were "high" and "medium," respectively (Agency Exhibit 2; Agency Exhibit 3). Appellant sent emails to his supervisor on both August 8, 2022 and August 15, 2022 refusing to comply with testing requirements (Agency Exhibit 5; Agency Exhibit 6). Therefore, the Agency clearly established by preponderant evidence that the charge and its specifications should be sustained.

The record further establishes a nexus between the charge and the efficiency of the service. The Board has recognized a legitimate government interest in expecting its employees to follow supervisory instructions, e.g. to ensure good order, discipline, and mission accomplishment. (*See Archuleta v. Department of Defense*, 121 M.S.P.R. 314, ¶ 24 (2014)). Here, there is a clear nexus between Appellant's refusal to comply with testing requirements (resulting in an inability to enter the worksite) and the impact it had on good order, discipline and mission accomplishment thereby impacting the efficiency of the service.

Finally, removal from federal service was not only a reasonable penalty in this case, but, in fact, the only penalty to prevent Appellant from continuing to engage in further similar conduct. Appellant could not have been clearer when he told his supervisor on August 1, 2022, "My status on refusing to test has not changed nor will it change" (Agency Exhibit 4, pg. 1). This statement was made after he had already received a Letter of Reprimand and a 10-day suspension. It is clear from the record there was no lesser penalty that could convince the employee to stop engaging in his misconduct.

For the reasons set out above, the Agency submits that the factual basis for Appellant's removal is supported by a preponderance of the evidence and that removal was a reasonable penalty that promoted the efficiency of the service.

AGENCY WITNESS LIST

The Agency may call the following witnesses at hearing:

1. JUSTIN NAHLIK

Mr. Nahlik will testify that he was Appellant's first-level supervisor prior to his removal. He will testify regarding Appellant's refusal to comply with testing requirements on August 8 and August 15, 2022 as well as the Appellant's history of progressive discipline for similar conduct. He will testify that Appellant made frequent, unplanned leave requests to avoid testing. He will testify as to the critical nature of Appellant's duties, that Appellant was unable to perform his duties nor gain entry to the worksite, and how other employees had to perform the work Appellant was unable to perform due to his refusal to comply with testing requirements.

2. JO-ELLEN ADKINS

Ms. Adkins served as the proposing official for Appellant's proposed removal. NGA utilizes a centralized system of employee discipline in all cases of serious misconduct, defined as greater than a 5-day suspension (IAF, pg. 146). Ms. Adkins will explain that cases involving

serious misconduct are referred to the Personnel Evaluation Board (PEB). Ms. Adkins, in her role as the Human Development (HD/HR) Deputy Director, serves as the PEB Chair and proposing official in all cases of serious misconduct (IAF, pg. 152). She will testify that she considered all the evidence of Appellant's misconduct, and carefully weighed the relevant Douglas Factors when proposing removal.

3. VIETTA WILLIAMS

Ms. Williams, in her role as the Human Development (HD/HR) Director, served as the deciding official for the Appellant's proposed removal. She will testify that she considered all the evidence of Appellant's misconduct and the evidence submitted by Appellant in his reply, and carefully weighed the relevant Douglas Factors in reaching the removal decision.

AGENCY EXHIBITS AND INDEX

1) Agency Exhibit1 – Section 2.1 DOD Policy Mandating Testing according to Community Transmission Levels.

2) Agency Exhibit 2 – NGA Notification of CDC Community Transmission Level (High) for the Week of August 8, 2023.

3) Agency Exhibit 3 – NGA Notification of CDC Community Transmission Level (Medium) for the Week of August 15, 2023

4) Agency Exhibit 4 – August 1, 2022 Email from Supervisor to Appellant stating unscheduled leave will no longer be permitted; Appellant expressing intent to never comply with testing requirements.

5) Agency Exhibit 5 – August 8, 2022 Email from Appellant to Supervisor (J. Nahlik) refusing to test (Specification #1).

6) Agency Exhibit 6 – August 15, 2022 Email from Appellant to Supervisor (J. Nahlik) refusing to test (Specification #2).

7) Agency Exhibit 7 – August 16, 2022 MFR from Supervisor (J. Nahlik) regarding history of Appellant's Refusal to Test.

8) Agency Exhibit 8 – Agency Leave Use Policy.

Respectfully Submitted,

Dennis Dailey

DENNIS DAILEY
Agency Representative
314-676-6295 Phone
dennis.d.dailey@nga.mil

Agency Exhibit 1

Section 2.1 - DoD Policy Mandating Testing According to Community Transmission Levels

SECTION 2: VACCINATION VERIFICATION AND MEASURES BASED ON VACCINATION STATUS

2.1. VACCINATION AND TESTING REQUIREMENTS.

1. Service members:

Service members (members of the Armed Forces under DoD authority on active duty or in the Selected Reserve, including members of the National Guard) are required to be fully vaccinated against COVID-19, subject to any identified contraindications, any administrative or other exemptions established in DoD policy, and any applicable court orders. Service members' vaccination status will be validated utilizing their Military Service-specific Individual Medical Readiness (IMR) system. If a Service member has been vaccinated against COVID-19 outside the military health system, that Service member must show official proof of his or her COVID-19 vaccination status to update the IMR system.

Once the applicable mandatory vaccination date has passed, COVID-19 screening testing is required at least weekly for Service members who are not fully vaccinated, including those who have an exemption request under review or who are exempted from COVID-19 vaccination and are entering a DoD facility located in a county or equivalent jurisdiction where the CDC COVID-19 Community Level is high or medium. Service members who are not on active duty and who also are DoD civilian employees or DoD contractor personnel must follow the applicable requirements in section 2.3 for DoD civilian employees or in section 2.4 for DoD contractor personnel.

2. DoD civilian employees:

Currently, the requirement for all Federal civilian employees to be vaccinated is not in effect. A U.S. district court judge issued a nationwide preliminary injunction prohibiting implementation and enforcement of civilian employee vaccination requirements based on EO 14043. Requirements subject to the injunction and not currently in effect are included in this guidance in a strikeout form for ease of reinstitution by USD(P&R) should the injunction be lifted.

At least weekly COVID-19 testing is required for those DoD civilian employees who are not fully vaccinated when the CDC COVID-19 Community Level is high or medium in the county or equivalent jurisdiction where the DoD facility is located. DoD civilian employees who are not fully vaccinated and who telework or work remotely on a full-time basis are not subject to weekly testing, but must provide a negative result (from a test performed within the prior 72 hours) for entry into a DoD facility located in the county where the COVID-19 Community Level is high or medium.

~~To ensure the safety of the DoD workforce,[14] DoD civilian employees are required to be fully vaccinated, unless they have received a temporary or permanent exemption. "DoD civilian employee" includes foreign nationals employed by DoD outside the United States, to the maximum extent possible while respecting host nation agreement and laws. It also includes DoD civilian employees who are engaged in full-time telework or remote work.~~

If they have not already done so, supervisors of DoD civilian employees must ask DoD civilian employees whether they are fully vaccinated. Employees who indicate they are fully vaccinated must provide proof of that vaccination status to their supervisors. Acceptable proof includes:

a. A copy of the COVID-19 Vaccination Record Card (CDC Form MLS-319813_r, published on September 3, 2020);
b. A copy of medical records documenting the vaccination;
c. A copy of immunization records from a public health or State immunization information system; or
d. A copy of any other official documentation containing the data points required to be verified by the supervisor.

When necessary for implementing FHP measures related to workplace access in section 5.5, supervisors of DoD civilian employees may ask DoD civilian employees whether they are up to date with COVID-19 vaccinations. If there is a supervisory concern about the accuracy of the DoD civilian employee's response, DoD civilian employees are required to provide proof of up-to-date vaccination status. Supervisors must not inquire about disabilities when asking DoD civilian employees about up-to-date vaccination status.

~~DoD requires that individuals who started their Government service after November 22, 2021, be fully vaccinated prior to their start date, except in limited circumstances where an accommodation is legally required. However, should DoD have an urgent, mission-critical hiring need to onboard new staff prior to those new staff becoming fully vaccinated, the DoD head may delay the vaccination requirement – in the case of such limited delays, DoD will require new hires to be fully vaccinated within 60 days of their start date and to follow safety protocols for not fully vaccinated individuals until they are fully vaccinated.~~

DoD civilian employees are eligible to receive the COVID-19 vaccine at any DoD vaccination site, including military medical treatment facilities. They may also opt to receive the COVID-19 vaccine at locations other than DoD vaccination sites, such as retail stores, private medical practices, and/or local and State public health department sites.

DoD civilian employees are authorized administrative leave to receive COVID-19 vaccination doses. ~~DoD civilian employees are authorized official duty time to receive COVID-19 vaccination doses, including first, second, and booster shots. For DoD civilian employees who are unable to receive a COVID-19 vaccination within their duty hours, regular overtime rules are applicable.~~ In most circumstances, DoD authorizes employees to take up to 4 hours to

[14] ~~Executive Order 14043, "Requiring Coronavirus Disease 2019 Vaccination for Federal Employees," September 9, 2021.~~

travel to the vaccination site, complete any vaccination dose, and return to work—for example, up to 8 hours of duty time for employees receiving two doses (If an employee needs to spend less time getting the vaccine, only the needed amount of duty time should be granted). Employees taking longer than 4 hours must document the reasons for the additional time (e.g., they may need to travel long distances to get the vaccine). Reasonable transportation costs that are incurred as a result of obtaining the vaccine from a site preapproved by DoD are handled the same way as local travel or temporary duty cost reimbursement is handled based on DoD policy.

DoD civilian employees who experience an adverse reaction to a COVID-19 vaccination should be granted no more than 2 workdays of administrative leave for recovery associated with a single COVID-19 vaccination dose.

DoD will grant leave-eligible employees up to 4 hours of administrative leave per dose to accompany a family member who is receiving any COVID-19 vaccination dose. For example, up to a total of 12 hours of leave for a family member receiving three doses—for each family member the employee accompanies. If an employee needs to spend less time accompanying a family member who is receiving the COVID-19 vaccine, DoD will grant only the needed amount of administrative leave. Employees should obtain advance approval from their supervisor before being permitted to use administrative leave for COVID-19 vaccination purposes. Employees are not credited with administrative leave or overtime work for time spent outside their tour of duty helping a family member get vaccinated.

DoD civilian employees should use the time and attendance code for "physical fitness" to record administrative leave for COVID-19 vaccination recovery time that prevents the employee from working or for taking a family member to be vaccinated for COVID-19) The type hour code is "LN" and the environmental/hazard/other code is "PF." Non-appropriated fund employers should code administrative leave related to COVID-19 in a way that can be easily reported.

3. DoD contractor personnel:

Vaccination requirements for DoD contractor personnel are outlined in several references.[15] In implementing EO 14042, the DoD will comply with all relevant court orders.

Onsite DoD contractor personnel will complete the DD Form 3150, "Contractor Personnel and Visitor Certification of Vaccination";[16] maintain a current completed copy; and show it to authorized DoD personnel upon request when they work at a DoD facility where the CDC COVID-19 Community Level is high or medium. Failure to complete the DD Form 3150 may result in denying DoD contractor personnel access to the DoD facility to which access is sought. Onsite DoD contractor personnel who are not fully vaccinated against COVID-19, because they are not performing under a covered contract that requires COVID-19 vaccination,

[15] Safer Federal Workforce Task Force, "COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors," September 24, 2021; Principal Director for Defense Pricing and Contracting Memorandum, "Class Deviation 2021-O0009-Ensuring Adequate COVID-l9 Safety Protocols for Federal Contractors," October 1, 2021; EO 14042, "Ensuring Adequate COVID Safety Protocols for Federal Contractors," September 9, 2021.
[16] https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd3150.pdf.

due to a legally required accommodation, or who decline to provide information about their COVID-19 vaccination status, will be subject to COVID-19 screening testing at least weekly when the CDC COVID-19 Community Level for the facility in which they work is high or medium. DoD contractor personnel who refuse required COVID-19 screening testing will be denied access to DoD facilities.

For purposes of the requirements regarding providing information about vaccination status and screening testing, "contractor personnel" are those individuals issued a credential by DoD that affords the individual recurring access to DoD facilities, classified herein as "credentialed recurring access" (CRA) (e.g., Common Access Cardholders) who are performing under a contractor or subcontract between their employer and the DoD. "Contractor personnel" do not include employees of DoD contractors or subcontractors receiving ad hoc access to DoD facilities (e.g., delivery personnel, taxi services) or employees of DoD contractors or subcontractors who have access to the grounds of, but not the buildings on, DoD installations (e.g., contract groundskeepers, fuel delivery personnel, household goods transportation personnel).

4. Official visitors:

"Official visitors" are non-DoD individuals seeking access, one time or recurring, in association with the performance of official DoD business (such as to attend a meeting), but who do not have CRA. "Official visitors" do not include personnel receiving ad hoc access to DoD facilities (e.g., delivery personnel, taxi services); individuals who have access to the grounds of, but not the buildings on, DoD installations (e.g., contract groundskeepers, fuel delivery personnel, household goods transportation personnel); personnel accessing DoD buildings unrelated to the performance of DoD business (e.g., residential housing); or personnel accessing DoD facilities to receive a public benefit (e.g., commissary; exchange; public museum; air show; military medical treatment facility; Morale, Welfare and Recreation resources).

Official visitors will complete DD Form 3150; maintain a current completed DD Form 3150; and show it to authorized DoD personnel, upon request when they are visiting a DoD facility where the CDC COVID-19 Community Level is high or medium. Failure to complete the DD Form 3150 may result in denial of an official visitor's access to the DoD facility to which access is sought. Service members not on active duty or active duty for training are also subject to the requirements in this paragraph.

When visiting a DoD facility where the CDC COVID-19 Community Level is high or medium, official visitors who are not fully vaccinated against COVID-19, or who decline to provide information about their vaccination status, must show an electronic or paper copy of negative results from an FDA-authorized or approved COVID-19 test administered no earlier than 72 hours prior to their visit. If unable to show a negative COVID-19 test result, the official visitor may be provided onsite self-testing, if available, or will be denied access to the DoD facility (or facilities) to which access is sought. Service members who are not on active duty or on active duty for training at the time of their official visit are subject to the requirements in this paragraph.

Official visitors will follow applicable DoD policies and procedures, as well as the policies and procedures of the Department or Agency they are visiting, if different from the DoD's. See section 6, below, on Meetings, for how requirements apply to attendees of in-person in meetings, events, and conferences hosted by the DoD.

All official visitors must comply with all applicable FHP guidance.

Currently, the requirement for all Federal civilian employees to be vaccinated is not in effect. A U.S. district court judge issued a nationwide preliminary injunction prohibiting implementation and enforcement of civilian employee vaccination requirements based on EO 14043. Requirements subject to the injunction and not currently in effect are included in this guidance in a strikeout form for ease of reinstitution by USD(P&R) should the injunction be lifted.

~~2.2. ENFORCEMENT OF DOD CIVILIAN EMPLOYEE COVID-19 VACCINATION REQUIREMENT.~~

~~a. DoD civilian employees who refuse to be vaccinated, or to provide proof of vaccination, are subject to disciplinary measures, up to and including removal from Federal service, unless the DoD civilian employee has received an exemption or the DoD civilian employee's timely request for an exemption is pending a decision.~~

~~b. Progressive enforcement actions include, but are not limited, to:~~

~~(1) A 5 calendar day period of counseling and education;~~
~~(2) A short suspension without pay, generally 14 calendar days or less, with an appropriate notice period. SES members may only be suspended for more than 14 calendar days;~~
~~(3) Removal from Federal service for failing to follow a direct order.~~

~~c. During the notice periods preceding adverse employment actions, DoD civilian employees generally should not be placed on administrative leave. DoD Components should require DoD civilian employees to continue to telework or report to the worksite and follow all mitigation measures applicable to not fully vaccinated DoD civilian employees when reporting to the worksite.~~

~~d. DoD Components will designate officials, at the appropriate organizational level, to handle the disciplinary process to promote consistent application of disciplinary measures. Such officials will decide each case with due regard to the facts and circumstances of that case.~~

~~e. Supervisors should contact their servicing human resources and legal offices to discuss options available to address individual situations regarding enforcement of this requirement.~~

AGENCY EXHIBIT 1

Agency Exhibit 2

NGA Notification of CDC Community Transmission Level (High) for the Week of August 8, 2023

NGA Today News



COVID-19 community levels for the week of Aug 8

Aug. 8, 2022

NGA Today
NGAToday@nga.mil

NGA-NEWS COVID-COMMUNITY-LEVELS WEEK-OF-AUG-8 HOME-NEWS

For background information on this COVID transmission rates message, read the NGA Today article "NGA loosens masking and testing requirement" at https://home.nga.mil/news/NGA_loosens_masking_and_testing_requirements.html

***

For the week of Aug. 8.

NCE is in a Medium community level posture.

CDC reports a medium chance of community transmission. Face coverings are not required, regardless of vaccination status, and screening testing will be required for personnel who are not fully vaccinated or who have not attested to vaccination status. Employees are required to present a **negative test result when they report to work the week of Aug. 8.**

Second Street and Arnold are in a High community level posture.

CDC reports a high chance of community transmission. Face coverings are required, regardless of vaccination status, and screening testing will be required for personnel who are not fully vaccinated or who have not attested to vaccination status. Employees are required to **present a negative test result when they report to work the week of Aug. 8.**

###

Agency Exhibit 2

Appx258

Agency Exhibit 3

NGA Notification of CDC Community Transmission Level (Medium) for the Week of August 15, 2023



COVID community levels for week of Aug 15

COVID-19 community levels for the week of Aug 15

Aug. 12, 2022

NGA Today
NGAToday@nga.mil / NGAToday@coe.ic.gov

NGA-NEWS HOME-NEWS COVID-COMMUNITY-LEVELS WEEK-OF-AUG-15

For background information on this COVID transmission rates message, read the NGA Today article "NGA loosens masking and testing requirement" at https://home.nga.mil/news/NGA_loosens_masking_and_testing_requirements.html (SBU) / https://home.nga.ic.gov/news/NGA_loosens_masking_and_testing_requirements.html (NGANet)

***

For the week of Aug. 15.

NCE is in a Low community level posture.

CDC reports a low chance of community transmission in the county. Face coverings and screening testing are not required regardless of individual vaccination status.

Second Street is in a Medium community level posture.

CDC reports a medium chance of community transmission. Face coverings are not required, regardless of vaccination status, and screening testing will be required for personnel who are not fully vaccinated or who have not attested to vaccination status. Employees are required to present a negative test result when they report to work the week of Aug. 15.

Arnold is in a High community level posture.

CDC reports a high chance of community transmission. Face coverings are required, regardless of vaccination status, and screening testing will be required for personnel who are not fully vaccinated or who have not attested to vaccination status. Employees are required to present a negative test result when they report to work the week of Aug. 15.

###

Related link

NGA Today article

"NGA loosens masking and testing requirement:" https://home.nga.mil/news/NGA_loosens_masking_and_testing_requirements.html (SBU) / https://home.nga.ic.gov/news/NGA_loosens_masking_and_testing_requirements.html (NGANet)

Agency Exhibit 3

Agency Exhibit 4

August 1, 2022 Email from Supervisor (J. Nahlik) to Appellant stating leave will no longer be permitted; Appellant expressing intent to never comply with testing requirements.

Dailey Dennis -Denny- D NGA-OGCA USA CIV

From: Nahlik Justin M Mr NGA-SFAGC USA CIV
Sent: Tuesday, December 12, 2023 9:56 AM
To: Dailey Dennis -Denny- D NGA-OGCA USA CIV
Subject: FW: [Non-DoD Source] leave request

Classification: UNCLASSIFIED//FOUO
PRIVACY ACT OF 1974 APPLIES
==========

From: Christopher Kroenung <ckroenung@sbcglobal.net>
Sent: Monday, August 1, 2022 11:14 AM
To: Nahlik Justin M Mr NGA-SFAGC USA CIV <Justin.M.Nahlik@nga.mil>
Subject: Re: [Non-DoD Source] leave request

Thanks for approving my leave. My status on refusing to test has not changed nor will it change. Just an FYI Dr Birx did an interview last week in which she admitted that she and her team lied about the vaccines. I am quite sure they are lying about masking and testing as well and we will see that when more whistleblowers come forward in the coming months. Please keep me informed on my work status.

Christopher J. Kroenung
[redacted]
Ballwin, MO 63021
(314) 315-6169

On Monday, August 1, 2022 at 11:06:54 AM CDT, <justin.m.nahlik@nga.mil> wrote:

Classification: UNCLASSIFIED
==========

Good Morning Chris,

After much consideration I will grant your leave for this week 8-1-22 through 8-5-2022. That said, this is not sustainable as we've continued to experience mission degradation in your absence. Therefore, this is the last unplanned leave that I will approve. I request that you arrive Monday morning the 8th of August to begin your training. If COVID testing is still required and you are still unvaccinated for COVID-19 according to NGA and DoD regulations, I expect you to furnish proof of a negative COVID-19 test.

AGENCY EXHIBIT 4

Please call me if you need anything or are confused by anything.

V/R,

Justin Nahlik

SFAGC Branch Chief

314-676-8057

From: Christopher Kroenung <ckroenung@sbcglobal.net>
Sent: Monday, August 1, 2022 5:57 AM
To: Nahlik Justin M Mr NGA-SFAGC USA CIV <Justin.M.Nahlik@nga.mil>
Subject: [Non-DoD Source] leave request

I understand that we are at high on the covid community level. I am requesting to use annual, sick leave and/or telework until the community level goes down to low.

Christopher J. Kroenung

[redacted]

Ballwin, MO 63021

(314) 315-6169

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Classification: UNCLASSIFIED

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Classification: UNCLASSIFIED//FOUO

AGENCY EXHIBIT 4

Agency Exhibit 5

August 8, 2022 Email from Appellant to Supervisor (J. Nahlik) refusing to test (Specification #1).

Dailey Dennis -Denny- D NGA-OGCA USA CIV

From: Nahlik Justin M Mr NGA-SFAGC USA CIV
Sent: Tuesday, December 12, 2023 9:53 AM
To: Dailey Dennis -Denny- D NGA-OGCA USA CIV
Subject: FW: [Non-DoD Source] status

Classification: UNCLASSIFIED//FOUO
PRIVACY ACT OF 1974 APPLIES
==========

From: Nahlik Justin M Mr NGA-SFAGC USA CIV
Sent: Monday, August 8, 2022 6:41 AM
To: 'Christopher Kroenung' <ckroenung@sbcglobal.net>
Subject: RE: [Non-DoD Source] status

Classification: UNCLASSIFIED
==========

Good Morning Chris,

Currently in your training status I do not believe it is possible to telework to do that job. If you are sick you may request last minute sick leave. In a previous email, I stated that the use of unscheduled annual leave was not sustainable as we've continued to experience mission degradation in your absence. I am denying the request for unscheduled annual leave.

With your continued refusal to come into work to continue your training and refusal to test in accordance with NGA and DoD policy I am forced to put you on administrative leave pending further disciplinary action, up to and including removal from your position and Federal Service.

Please call me or HD if you have any questions.

V/R,

Justin Nahlik
SFAGC Branch Chief
Work 314-676-8057
Cell 314-308-4722

From: Christopher Kroenung <ckroenung@sbcglobal.net>
Sent: Monday, August 8, 2022 5:46 AM
To: Nahlik Justin M Mr NGA-SFAGC USA CIV <Justin.M.Nahlik@nga.mil>
Subject: [Non-DoD Source] status

I am writing to you today to let you know that I am refusing to test for the corona virus. I am available to telework or use sick/annual leave. Let me know if this is possible.

Thanks

Christopher J. Kroenung
[redacted]
Ballwin, MO 63021
(314) 315-6169

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Classification: UNCLASSIFIED

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Classification: UNCLASSIFIED//FOUO

AGENCY EXHIBIT 5

Agency Exhibit 6

August 15, 2022 Email from Appellant to Supervisor (J. Nahlik) refusing to test (Specification #2).

Dailey Dennis -Denny- D NGA-OGCA USA CIV

From: Nahlik Justin M Mr NGA-SFAGC USA CIV
Sent: Tuesday, December 12, 2023 9:59 AM
To: Dailey Dennis -Denny- D NGA-OGCA USA CIV
Subject: FW: [Non-DoD Source] status

Classification: UNCLASSIFIED//FOUO
PRIVACY ACT OF 1974 APPLIES
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From: Nahlik Justin M Mr NGA-SFAGC USA CIV
Sent: Monday, August 15, 2022 7:43 AM
To: 'Christopher Kroenung' <ckroenung@sbcglobal.net>
Subject: RE: [Non-DoD Source] status

Classification: UNCLASSIFIED
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Good Morning Chris,

As far as I know we are now at the Medium level which still requires testing if you are unvaccinated. As far as I know you are still on administrative leave pending further disciplinary action. I will get back to you if anything changes.

V/R,

Justin Nahlik
SFAGC Branch Chief
314-676-8057

From: Christopher Kroenung <ckroenung@sbcglobal.net>
Sent: Monday, August 15, 2022 6:17 AM
To: Nahlik Justin M Mr NGA-SFAGC USA CIV <Justin.M.Nahlik@nga.mil>
Subject: [Non-DoD Source] status

Just writing to you today to let you know that I still am not complying with testing. I have noticed that the CDC has changed their policy as far as testing vaccinated individuals. Please let me know of my status and if policy has changed.

Christopher J. Kroenung
[redacted]
Ballwin, MO 63021
(314) 315-6169

==========
Classification: UNCLASSIFIED

Agency Exhibit 7

August 16, 2022 MFR from Supervisor (J. Nahlik) regarding history of Appellant's Refusal to Test.

NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY
7500 GEOINT Drive
Springfield, Virginia 22150

MEMORANDUM FOR RECORD 16 August 2022

(U//FOUO) Background:

(U//FOUO) Mr. Christopher Kroenung (SFAGC) is a non-vaccinated employee who has refused to comply with NGA's COVID testing protocols since implementation of the requirement. Based on his non-compliance, he was issued a Letter of Reprimand (LoR) in Feb (1st offense) and received a 10-day suspension in Jul (2nd offense).

(U//FOUO) Chris has spent the majority of calendar year 2022 (YTD) in a leave status as a result of his refusal to test. Per mission, 100% telework is not an option, therefore his absences have resulted in a considerable amount of mission degradation.

(U) Current Situation:

(U//FOUO) 11 Jul 22 - HD mailed Chris the Notice of Decision (NOD) regarding 10-day suspension, which would take effect from 18-27 Jul 22 with a return to duty date of 28 Jul 22. The NOD also stated that he would have seven (7) calendar days from the end of his suspension (i.e. until 4 Aug 22) to comply with NGA's COVID-19 testing program.

(U) 12 Jul 22 - Chris confirmed receipt of the NOD. He requested annual leave for 28-29 Jul 22, which I subsequently approved.

(U) 1 Aug 22 - Chris emailed: "I understand that we are at high on the covid community level. I am requesting to use annual, sick leave and/or telework until the community level goes down to low."

(U) I responded as follows: "After much consideration I will grant your leave for this week 8-1-22 through 8-5-2022. That said, this is not sustainable as we've continued to experience mission degradation in your absence. Therefore, this is the last unplanned leave that I will approve. I request that you arrive Monday morning the 8th of August to begin your training. If COVID testing is still required and you are still unvaccinated for COVID-19 according to NGA and DoD regulations, I expect you to furnish proof of a negative COVID-19 test."

(U) Based on Chris being in an approved leave status for this week, he was not required to comply with the COVID-19 testing program on 4-5 Aug 22.

(U) 5 Aug 22 - I sent the following email to Chris: "Good Morning Chris, In advance of your expected return to work on Monday, I'm just passing along another reminder that NGA reasonable accommodations remains a potential resource available to you. Should you desire to see if you would be eligible for an accommodation, they can be reached at 314-676-3704 (West), 571-557-5132 (East), or reasonableaccommodation@nga.mil for more information."

AGENCY EXHIBIT 7

(U) 8 Aug 22 - Chris emailed: "I am writing to you today to let you know that I am refusing to test for the corona virus. I am available to telework or use sick/annual leave. Let me know if this is possible."

(U) I responded as follows: "Good Morning Chris, Currently in your training status I do not believe it is possible to telework to do that job. If you are sick you may request last minute sick leave. In a previous email, I stated that the use of unscheduled annual leave was not sustainable as we've continued to experience mission degradation in your absence. I am denying the request for unscheduled annual leave. With your continued refusal to come into work to continue your training and refusal to test in accordance with NGA and DoD policy I am forced to put you on administrative leave pending further disciplinary action, up to and including removal from your position and Federal Service. Please call me or HD if you have any questions."

(U) I notified HD Employee Relations of Chris' non-compliance to pursue disciplinary action for refusal to test in accordance with agency guidance.

(U) 15 Aug 22 – Chris emailed: "Just writing to you today to let you know that I still am not complying with testing. I have noticed that the CDC has changed their policy as far as testing vaccinated individuals. Please let me know of my status and if policy has changed."

(U) I responded as follows: "Good Morning Chris, As far as I know we are now at the Medium level which still requires testing if you are unvaccinated. As far as I know you are still on administrative leave pending further disciplinary action. I will get back to you if anything changes."

(U) I again notified HD Employee Relations of Chris' continued non-compliance.

(U) 16 Aug 22 – I sent the following email to Chris: "Chris, As a follow-up to my email to you last Monday, 8 August, I stated I do not believe it is possible for you to telework to do that job. To clarify, telework is not an option at this time. Once you complete your training, which requires in-office representation, ad hoc telework possibilities can be reassessed."

(U) Conclusion:

(U//FOUO) Mr. Christopher Kroenung has continued to fail to adhere to DoD Force Health Protection (FHP) guidance despite several communications and being issued a Letter of Reprimand and a 10-day suspension. Those formal disciplinary actions did not correct the behavior therefore I recommend pursuit of progressive disciplinary action.

NAHLIK.JUSTIN.MATHEW.1383368894 Digitally signed by NAHLIK.JUSTIN.MATHEW.1383368894 Date: 2022.08.16 13:02:08 -05'00'

Justin Nahlik
Branch Chief, SFAGC
National Geospatial-Intelligence Agency

AGENCY EXHIBIT 7

Agency Exhibit 8

NGA Leave Use Policy

ENCLOSURE 4

ANNUAL LEAVE

An employee may use annual leave for vacations, rest and relaxation, and personal business or emergencies. Annual leave may be used for pregnancy, childbirth and recovery, bonding with or caring for a baby, or for other childcare responsibilities. Except for emergency situations, use of annual leave must be authorized in advance. NGA employees may use leave in quarter-hour (15 minute) increments IAW Reference (p). Other Government Agency (OGA) personnel must follow home agency policies and guidance when requesting and recording paid and unpaid time off.

1. Accrual. Federal employees earn annual leave based on years of Federal service. Leave accrues only while the employee is in a pay status, at the rates shown in Table 1 IAW Reference (a):

Table 1. Annual Leave Accrual Rates

Years of service	Full-time employees	Part-time employees
Fewer than 3 years	4 hours per pay period	1 hour per pay period for every 20 hours in a pay status
At least 3 but fewer than 15 years	6 hours per pay period (10 hours in the last full pay period of the leave year)	1 hour per pay period for every 13 hours in a pay status
15 years and greater	8 hours per pay period	1 hour per pay period for every 10 hours in a pay status

a. Part-time employee carryover. Part-time employees may carry forward from one pay period to the next those excess hours that are not evenly divisible by 10, 13, or 20 hours, as noted in Table 1 IAW Reference (p).

b. Maximum leave carryover. Most employees are entitled to carry over a maximum of 240 hours of accrued annual leave into the next leave year IAW Reference (p). Exceptions are the following:

(1) Members of the Defense Intelligence Senior Executive Service (DISES) and Defense Intelligence Senior Level (DISL) accrue 8 hours of annual leave for each biweekly pay period regardless of years of service and may carry a maximum of 720 hours of annual leave into the next leave year IAW Reference (p).

(2) Employees stationed outside of the United States are permitted to carry an annual leave balance of 360 hours into the next leave year. This entitlement does not apply to local hires or employees deployed on a temporary assignment. Upon return

ENCLOSURE 5

SICK LEAVE

~~1. Sick Leave.~~ Sick leave is paid leave, subject to supervisory approval, used when an employee is incapacitated ~~by physical or mental illness,~~ due to a physical illness, mental health condition, injury, pregnancy, or childbirth; is receiving medical, dental, or eye examination or treatment; would jeopardize the health of others by their presence on the job because of exposure to a contagious disease as determined by a health care provider or health authorities having jurisdiction; or has been approved to use sick leave for a family member. (References (a) and (n))

1. ~~2.~~ Accumulated and Accrued Sick Leave.

a. Accrual. All full-time employees accrue sick leave at the rate of four hours per pay period, regardless of length of service, with no maximum accumulation limit. Part-time employees earn one hour of sick leave for every 20 hours in a pay status IAW Reference (a).

b. Documentation. NGA may grant sick leave only when supported by administratively acceptable evidence. A supervisor may consider an employee's statement regarding the absence as administratively acceptable IAW Reference (n). Adequate documentation for sick leave is a general statement describing why the employee is absent. For all sick leave absences as determined necessary by the supervisor, a medical certificate or other administratively acceptable evidence as to the reason for an absence must be submitted no later than 15 calendar days after the date the employee returns to work or the supervisor initiates a request. If necessary, an employee may be granted an additional 15 days IAW Reference (n).

c. Sick leave for family care. Sick leave may be used to care for a family member who is incapacitated by a medical or mental condition, injury, pregnancy, or childbirth; to tend to a family member receiving medical, dental, or optical examination or treatment; to provide care for a family member with a serious health condition; to make arrangements necessitated by the death of a family member; or to attend the funeral of a family member. This may include accompanying the birth mother to doctors' appointments, tending to the birth mother in the hospital or other health care facility, or caring for the birth mother during the period of incapacitation following childbirth.

(1) All full-time employees are eligible to use up to 104 hours of sick leave throughout each leave year for family care or bereavement purposes. Hours used by a part-time employee for this purpose may not exceed the number of hours of sick leave the employee normally accrues during a leave year. Sick leave used for family care or bereavement may be used all at once, as needed, or intermittently throughout the leave year IAW Reference (a).

AGENCY EXHIBIT 8

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CENTRAL REGIONAL OFFICE

CHRIS J. KROENUNG	)	DOCKET NUMBER
	)	CH-0752-23-0234-I-1
Appellant,	)	
	)	
v.	)	
	)	
DEPARTMENT OF DEFENSE	)	
	)	DATE: January 9, 2023
Agency.	)	

APPELLANT'S PREHEARING SUBMISSIONS

Statement of Facts

1. Chris J. Kroenung was employed as an Aeronautical Analyst, IA-03, at the National Geospatial-Intelligence Agency, at all relevant times for the purposes of this hearing.

2. As early as August 2021, it was public knowledge that the COVID-19 vaccine did "not prevent transmission" of the disease, particularly as it related to the Delta variant, which comprised 93% of all cases at the time.[1]

3. In September of 2021, the Agency began implementing a vaccine mandate for its employees.

4. As part of this mandate, the Agency required its employees to attest to their vaccination status.

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[1] Holcombe and Maxouris, *CDC head says COVID-19 vaccines prevent severe illness and death, but they can't prevent transmission*, CNN.com, (August 16, 2021), at https://www.cnn.com/us/live-news/coronavirus-pandemic-vaccine-updates-08-06-21/h_61de1502e86060f5faf4477339928e33. *See also*, Singanayagam, Ankia, PhD, et al., *Community transmission and viral load kinetics of the SARS-CoV-2 delta (B.1.617.2) variant in vaccinated and unvaccinated individuals in the UK: a prospective, longitudinal, cohort study,* The Lancet, Infectious Diseases, October 29, 2021, https://www.thelancet.com/journals/laninf/article/PIIS1473-3099(21)00648-4/fulltext (British study finding that "fully vaccinated individuals with breakthrough infections have peak viral load similar to unvaccinated cases and can efficiently transmit infection in household settings, including to fully vaccinated contacts")

5. On December 9, 2021, Branch Chief Justin Nahliks called Mr. Kroening into his office where Mr. Nahliks informed him that the Agency would require him to test weekly starting on Monday, December 19.

6. From December 20, 2021 to January 3, 2022, Mr. Kroening went on scheduled annual leave.

7. Upon his return to work on January 3, Deputy Division Chief Paul McLaughlin called Mr. Kroenung into his office to ask for proof of a COVID test. Mr. Kroenung informed him that he refused to test.

8. Mr. McLauglin sent Mr. Kroenung home on administrative leave.

9. Mr. Kroenung remained on administrative leave until March 7, 2022.

10. During that time, on February 17, 2022, Branch Chief Nahlik issued a letter of reprimand to Mr. Kroenung.

11. On March 8, 2022, the Agency allowed Mr. Kroenung to return to work as community levels of COVID were low in the St. Louis area.

12. Mr. Kroenung continued to go to work until May 26, 2022.

13. During that time, on May 17, 2022, the Deputy Director of the Human Directorate, Jo-Ellen Adkins, signed a proposed 10-day suspension.

14. From May 27 until June 25, Mr. Kroenung was on sick leave because of a car accident and the pain medications he received for injuries sustained.

15. From June 27, 2022- August 7, 2022, Mr. Kroenung was on annual leave.

16. While on annual leave, Ms. Vietta Williams issued a 10-day suspension to take place July 18 to July 27.

17. On or about August 7, Branch Chief Nahlik informed Mr. Kroenung that Mr. Kroenung would not be able to use any more annual leave because of "Mission Degradation."

18. At the time of Mr. Nahlik's notice, Mr. Kroenung had over 120 hours of annual leave and 100 hours of sick leave remaining.

19. Mr. Kroenung informed Mr. Nahlik that he would not test.

20. Mr. Nahlik told Mr. Kroenung that he would put him back on administrative leave.

21. At the time, Mr. Kroening requested telework. He was told that telework would not be an option for him because he was training.

22. Mr. Kroening knows of other employees whom the Agency allowed to telework while they were training in a similar timeframe.

23. The Agency hosted a Christmas Party in 2022 and did not require attendees to test whether they were vaccinated or unvaccinated.

24. The Agency enforced the testing mandate in an uneven, arbitrary, and capricious manner.

25. On August 11, 2022, the CDC announced that it would treat COVID-19 prevention and mitigation efforts the same regardless of vaccination status.

26. On October 24, 2022, Deputy Director for the Human Directorate JoEllen Adkins issued a Notice of Proposed Removal for refusal to test for COVID-19.

27. On March 4, the Director of the Human Directorate, Vietta Williams, issued a Notice of Removal for failure to test for COVID-19.

Issues

Whether the testing mandate, which served as the justification for Mr. Kroenung's termination, was lawful.

Even if it was lawful, whether the Agency enforced the testing mandate in a manner that could justify Mr. Kroenung's termination.

Appellant witness list

Mike Glascock-*NGA Aeronautical Analyst*: Mr. Glascock is able to testify in detail to the inconsistencies in the Agency's administration of the testing policy.

Andrew Katze-*NGA Aero Branch Chief*: Will testify to Agency attitudes toward accommodations and those who requested accommodations from Agency policy, and also inconsistencies in the administration of the policy.

Don Leggins-*Aero Employee*: Will testify to the inconsistencies in enforcement of the testing policy.

Brent Markem-*NGA Deputy Director*: Will testify to the administration of Agency testing policy.

Justin Nahlik-*NGA Aero Branch Chief*: Will testify to the administration of Agency testing policy.

Vietta S Williams-*NGA Director of HD*: Will testify to the administration of Agency testing policy.

Exhibit List

Exhibit A- Email from Justin Nahlik to Chris Kroenung

Exhibit B- Email from Justin Nahlik to Chris Kroenung

Exhibit C- EEOC guidance regarding COVID-19 testing

Exhibit D- CDC press release regarding COVID-19 guidance

Exhibit E- Collection of articles regarding COVID-19 tests

Exhibit F- St. Louis community infection level, 7/26/22-8/1/22

Exhibit G- Email from "Safer GSA Workforce" regarding testing program

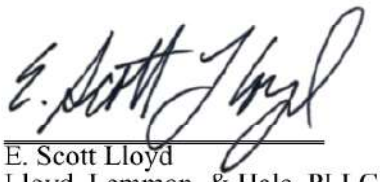
Exhibit H- St. Louis community infection level, 8/8/22-8/14/22

Exhibit I- Chart depicting vaccine effectiveness over time

Exhibit J- NGA leave policy

Dated: January 9, 2024

Respectfully Submitted,



E. Scott Lloyd
Lloyd, Lemmon, & Hale, PLLC
15 Chester Street
Front Royal, VA 22630
(540) 823-1110
scott@lloydlemmonhale.com
Counsel for Appellant



follow up

Yahoo/Inbox

Tue, Aug 16, 2022 at 10:35 AM

From: justin.m.nahlik@nga.mil
To: christopher j.kroenung@nga.mil, ckroenung@sbcglobal.net

Classification: UNCLASSIFIED

Chris,

As a follow-up to my email to you last Monday, 8 August, I stated I do not believe it is possible for you to telework to do that job.

To clarify, telework is not an option at this time. Once you complete your training, which requires in-office representation, ad hoc telework possibilities can be reassessed.

V/R,

Justin Nahlik
SFAGC Branch Chief
314-676-8057

Classification: UNCLASSIFIED

Exhibit A

RE: [Non-DoD Source] status

Yahoo/Inbox

Mon, Aug 8, 2022 at 6:43 AM

From: justin.m.nahlik@nga.mil
To: ckroenung@sbcglobal.net

Classification: UNCLASSIFIED
==========

Good Morning Chris,

Currently in your training status I do not believe it is possible to telework to do that job. If you are sick you may request last minute sick leave. In a previous email, I stated that the use of unscheduled annual leave was not sustainable as we've continued to experience mission degradation in your absence. I am denying the request for unscheduled annual leave.

With your continued refusal to come into work to continue your training and refusal to test in accordance with NGA and DoD policy I am forced to put you on administrative leave pending further disciplinary action, up to and including removal from your position and Federal Service.

Please call me or HD if you have any questions.

V/R,

Justin Nahlik
SFAGC Branch Chief
Work 314-676-8057
Cell 314-308-4722

> Show original message

Exibit B

==========
Classification: UNCLASSIFIED

Pursuant to the Americans with Disabilities Act (ADA), when employers implement any mandatory testing of employees, it must be "job related and consistent with business necessity."

- In the context of the COVID-19 pandemic, the EEOC notes that testing to determine if an employee has a SARS-CoV-2 infection with an "accurate and reliable test" is permissible as a condition to enter the workplace because an employee with the virus will "pose a direct threat to the health of others."
- EEOC notes that testing administered by employers that is consistent with current CDC guidance will meet the ADA's business necessity standard.
- Workplace-based testing should not be conducted without the employee's consent.
- Employers who mandate workplace testing for SARS-CoV-2 infection should discuss further with employees who do not consent to testing and consider providing alternatives as feasible and appropriate, such as reassignment to tasks that can be performed via telework.

Exhibit C

Español | Other Languages

CDC Centers for Disease Control and Prevention

CDC Newsroom

CDC Newsroom Home

CDC streamlines COVID-19 guidance to help the public better protect themselves and understand their risk

Press Release

Embargoed Until: Thursday, August 11, 2022, 3:00 PM ET
Contact: Media Relations
(404) 639-3286

Today, CDC is streamlining its COVID-19 guidance to help people better understand their risk, how to protect themselves and others, what actions to take if exposed to COVID-19, and what actions to take if they are sick or test positive for the virus. COVID-19 continues to circulate globally, however, with so many tools available to us for reducing COVID-19 severity, there is significantly less risk of severe illness, hospitalization and death compared to earlier in the pandemic.

"We're in a stronger place today as a nation, with more tools—like vaccination, boosters, and treatments—to protect ourselves, and our communities, from severe illness from COVID-19," said Greta Massetti, PhD, MPH, MMWR author. "We also have a better understanding of how to protect people from being exposed to the virus, like wearing high-quality masks, testing, and improved ventilation. This guidance acknowledges that the pandemic is not over, but also helps us move to a point where COVID-19 no longer severely disrupts our daily lives."

In support of this update CDC is:

- Continuing to promote the importance of being up to date with vaccination to protect people against serious illness, hospitalization, and death. Protection provided by the current vaccine against symptomatic infection and transmission is less than that against severe disease and diminishes over time, especially against the currently circulating variants. For this reason, it is important to stay up to date, especially as new vaccines become available.
- Updating its guidance for people who are not up to date on COVID-19 vaccines on what to do if exposed to someone with COVID-19. This is consistent with the existing guidance for people who are up to date on COVID-19 vaccines.
- Recommending that instead of quarantining if you were exposed to COVID-19, you wear a high-quality mask for 10 days and get tested on day 5.
- Reiterating that regardless of vaccination status, you should isolate from others when you have COVID-19.
  - You should also isolate if you are sick and suspect that you have COVID-19 but do not yet have test results.

CDC.gov Privacy Settings

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Exhibit D

Federal Testing Plan for Federal Workforce

April 7, 2021

Key Points

- The purpose of this guidance is to provide federal agencies with strategies to consider for incorporating testing for SARS-CoV-2, the virus that causes COVID-19, into their COVID-19 workplace safety plan.
- Workplace-based testing for SARS-CoV-2 could identify federal employees and contractors with SARS-CoV-2 infection, and thus help prevent or reduce further transmission.
- This guidance includes descriptions of different types of SARS-CoV-2 tests; scenarios where SARS-CoV-2 testing may be used; and considerations for screening testing (testing asymptomatic workers with no known or suspected exposure to SARS-CoV-2).
- This guidance does not address testing requirements for the federal workforce serving in healthcare facilities, nursing home and long-term care facilities, or correctional or detention facilities where setting-specific recommendations apply.
- Each federal agency should apply this guidance according to the situation in their workplace or workforce.

On This Page

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Considerations for Testing for SARS-CoV-2 Infection
SARS-CoV-2 Testing Scenarios
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How to Determine Resolution of Infection
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Background

In accordance with the Executive Order on Protecting the Federal Workforce and Requiring Mask-Wearing, issued on January 21, 2021, and the Office of Management and Budget (OMB) Memorandum M-21-15, COVID-19 Safe Federal Workplace: Agency Model Safety Principles, the Secretary of Health and Human Services, through the Director of the Centers for Disease Control and Prevention (CDC), was directed to develop a testing plan for the federal workforce based on the latest guidance from CDC.

Purpose and Scope

The purpose of this document is to provide federal agencies with strategies to consider for incorporating testing for SARS-CoV-2, the virus that causes COVID-19, into their COVID-19 workplace health and safety plan. This document provides guidance for testing federal employees and contractors in the executive branch of the U.S. Government. Each federal agency should apply this guidance according to the situation in its workplace or workforce.

This guidance is based on community transmission metrics and addresses the populations to be tested, testing types, frequency of testing, protocols for positive test results, and coordination with state, territorial, tribal, and local health officials for contact tracing.

This document does not address decisions regarding payment for or insurance coverage of such testing.

This document does not address testing requirements for the federal workforce serving in healthcare facilities, nursing home and long-term care facilities, or other healthcare settings (e.g., Veterans Affairs facilities, Indian Health Service, or Department of Defense healthcare facilities) or correctional or detention facilities (e.g., Bureau of Prisons facilities, Immigration and Customs Enforcement detention facilities) where setting-specific recommendations apply.

These considerations are meant to supplement, not replace, any federal, state, local, territorial, or tribal health and safety laws, rules, and regulations with which federal workplaces must comply. These strategies should be carried out in a manner consistent with existing laws and regulations, including laws protecting employee privacy and confidentiality. This guidance should also be carried out consistent with Equal Employment Opportunity Commission (EEOC) guidance regarding permissible testing policies and procedures.

Although testing has benefits for early identification and controlling outbreaks, it should be an integrated component of the comprehensive workplace program and not used as a substitute for other measures, such as COVID-19 vaccination, proper ventilation, temperature and symptom screening, physical distancing, mask wearing, hand hygiene, and cleaning and disinfection.

Types of Tests

Viral tests, including antigen tests and nucleic acid amplification tests (NAATs) are used **to detect infection** with SARS-CoV-2 by evaluating whether the virus is present in respiratory specimens or saliva (NAAT only). Results help identify infected people who need to isolate from other people to minimize transmission. There are two types of viral tests:

- NAATs, such as real-time reverse transcription-polymerase chain reaction (RT-PCR), are high-sensitivity, high-specificity tests for diagnosing SARS-CoV-2 infection. NAATs detect one or more viral ribonucleic acid (RNA) genes and indicate a current infection or a recent infection but, due to prolonged viral RNA detection, are not always direct evidence for the presence of virus capable of replicating or of being transmitted to others. Most NAATs need to be processed in a laboratory and time to results can vary (~1–3 days), but some NAATs are point-of-care tests with results available in about 15–45 minutes.
- Antigen tests are immunoassays that detect the presence of a specific viral antigen. Antigen tests generally have similar specificity but are less sensitive than most NAATs. Most can be processed at the point of care with results available in minutes and thus can be used in screening programs to quickly identify those who are likely to be contagious. Because of the performance characteristics of antigen tests, it may be necessary to confirm some antigen test results (e.g., a negative test in persons with symptoms or a positive test in persons without symptoms) with a laboratory-based NAAT. Furthermore, based on the authorization from FDA, some point-of-care NAATs cannot be used for confirmatory testing. Use of the Antigen Testing Algorithm is **recommended** to determine when confirmatory testing is needed.

Antibody (or serology) tests are used to **detect previous infection** with SARS-CoV-2. CDC does not recommend using antibody testing to diagnose current infection.

Intended Uses of SARS-CoV-2 Testing in Federal Workplaces

Diagnostic testing is intended to identify current infection and is performed when a person has signs or symptoms consistent with COVID-19, or when a person is asymptomatic or presymptomatic but has recent known or suspected exposure to SARS-CoV-2.

Screening tests are intended to identify asymptomatic or presymptomatic infected persons without known or suspected exposure to SARS-CoV-2.

- Identifying persons who might be contagious but are unaware allows implementation of measures to prevent further transmission.
- Screening using tests that provide rapid results, such as point-of-care antigen tests, can be critical to interrupting SARS-CoV-2 transmission, particularly when done serially. This is especially important when community risk or transmission levels are substantial or high (see Table 2 below).

Considerations for Testing for SARS-CoV-2 Infection

Federal agencies can incorporate SARS-CoV-2 testing as part of a comprehensive approach to reducing transmission in non-healthcare workplaces. CDC recommends a layered approach to reduce workplace exposures to SARS-CoV-2. Symptom screening, testing, and contact tracing are strategies to identify workers infected with SARS-CoV-2 so that actions can be taken to slow and stop the spread of the virus.

Disclosures and Consent Elements

Employees undergoing testing should receive clear information on

- The manufacturer and name of the test, the type of test, the purpose of the test, the performance specifications of the test, any limitations associated with the test, who will pay for the test, how the test will be performed, how and when they will receive test results, and;
- How to understand what the results mean, actions associated with negative or positive results, the potential need for confirmatory testing, the difference between testing for workplace screening versus for medical diagnosis, who will receive the results, how the results may be used, and any consequences for declining to be tested.

Individuals tested are required to receive patient fact sheets as part of the test's emergency use authorization (EUA).

Pursuant to the Americans with Disabilities Act (ADA), when employers implement any mandatory testing of employees, it must be "job related and consistent with business necessity."

- In the context of the COVID-19 pandemic, the EEOC notes that testing to determine if an employee has a SARS-CoV-2 infection with an "accurate and reliable test" is permissible as a condition to enter the workplace because an employee with the virus will "pose a direct threat to the health of others."
- EEOC notes that testing administered by employers that is consistent with current CDC guidance will meet the ADA's business necessity standard.
- Workplace-based testing should not be conducted without the employee's consent.
- Employers who mandate workplace testing for SARS-CoV-2 infection should discuss further with employees who do not consent to testing and consider providing alternatives as feasible and appropriate, such as reassignment to tasks that can be performed via telework.

Testing Locations and Test Site Reporting Requirements

- Federal agencies should identify how to refer or provide diagnostic testing for employees who develop symptoms or have a known or suspected exposure to SARS-CoV-2. Some examples include an occupational medicine provider, nearby testing facilities, local healthcare institutions, or in consultation with the local or state health department.

- Alternatively, federal agencies can establish onsite capacity for diagnostic or screening testing. Point-of-care testing sites need to obtain a Clinical Laboratory Improvement Amendments (CLIA) certificate of waiver. Some work-based healthcare professionals (e.g., occupational health nurses) may perform SARS-CoV-2 testing in work-based health centers if they are trained in specimen collection and performing the test according to the manufacturer's instructions. It is important that work-based healthcare professionals also have access to, and training on, the proper use of personal protective equipment (PPE).
- Every SARS-CoV-2 testing site (sometimes called COVID-19 testing site) is required to report diagnostic and screening test results to the appropriate state or local health officials .

Recordkeeping

The Occupational Safety and Health Administration (OSHA) has issued Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace and interim guidance for enforcing the requirements of 29 CFR Part 1904, Recording and Reporting Occupational Injuries and Illness, with respect to the recording of occupational illnesses, specifically cases of COVID-19.

- Under OSHA's recordkeeping requirements, COVID-19 is a recordable illness, and employers are responsible for recording cases of COVID-19 on Form 300 logs if the following requirements are met:
  (1) the case is a confirmed case of COVID-19;
  (2) the case is work-related (as defined by 29 CFR 1904.5); and
  (3) the case involves one or more relevant recording criteria (set forth in 29 CFR 1904.7) (e.g., medical treatment beyond first aid, days away from work).
- Employers must follow the requirements in 29 CFR 1904 when reporting COVID-19 fatalities and hospitalizations to OSHA. More information is available on OSHA's website. Employers should also report outbreaks to health departments as required and support their contact tracing efforts.
- Employers are encouraged to frequently check OSHA Injury and Illness Recordkeeping and Reporting Requirements webpage for updates.

SARS-CoV-2 Testing Scenarios

Diagnostic Testing

Testing persons with signs or symptoms consistent with COVID-19

Federal agencies should refer any employee with signs and symptoms of COVID-19 for diagnostic testing.

- CDC recommends that any unvaccinated person with symptoms of COVID-19 be tested and follow the advice of the person's healthcare provider. Fully vaccinated federal employees with symptoms of COVID-19 should consult their healthcare provider or a public health professional about the need for testing.
- Federal agencies should identify where to refer employees for diagnostic testing.
- Federal agencies should advise employees to stay home if they are sick.
- Federal agencies should conduct daily in-person or virtual health checks (e.g., symptom and temperature screening) to identify employees with signs or symptoms consistent with COVID-19 before they enter a facility, in accordance with CDC's Guidance for Businesses and Employers Responding to Coronavirus Disease 2019.

- Workers with COVID-19 symptoms should be immediately separated from other employees, customers, and visitors, and sent home or to a healthcare facility, depending on how severe their symptoms are, and follow CDC guidance for caring for oneself.
- Symptomatic workers waiting for test results should isolate at home to keep potentially infected workers out of the federal workplace.
- Federal employees are encouraged to implement flexible, nonpunitive sick leave and supportive policies as part of a comprehensive approach to prevent and reduce transmission among employees.
- Positive test results using a viral test should be interpreted to indicate that a person has COVID-19 and should not come to work and should isolate at home. Decisions to discontinue isolation for workers with COVID-19 and allow them to return to the workplace may follow either a symptom-based, time-based, or a test-based strategy. In most cases, a test-based strategy to end isolation is not recommended (see the "How to determine resolution of infection" section below).

Testing asymptomatic persons with recent known or suspected exposure to SARS-CoV-2

Federal employees who have been exposed at work or outside of work should receive diagnostic testing.

- Because of the potential for asymptomatic and pre-symptomatic transmission of SARS-CoV-2, it is important that workers exposed to people with known or suspected COVID-19 be quickly identified and quarantined. While CDC continues to recommend a 14-day quarantine for unvaccinated individuals who are close contacts of a person with COVID-19, viral testing may also be used as part of an option to shorten the quarantine period.
- Viral testing is recommended for workers immediately after being identified as a close contact, and if negative, they should be tested again in 5–7 days after last exposure or immediately if symptoms develop during quarantine.
- For workers who previously received positive test results and do not have symptoms of COVID-19, retesting is not recommended for up to 3 months from their last positive test result, and they do not have to quarantine as long as they do not develop new symptoms.
- Most workers who are fully vaccinated against COVID-19 are not required to quarantine or be tested if they are exposed, if they show no symptoms; however, they should still monitor for symptoms of COVID-19 for 14 days following an exposure. Fully vaccinated workers in non-healthcare congregate settings and other high-density workplaces should be tested after an exposure.

Federal agencies should provide diagnostic testing for employees who had close contact (within 6 feet for a combined total of 15 minutes or more during a 24-hour period) with persons with COVID-19 at work.

- This testing should be provided at a convenient place and time and at no cost to the employee.

Federal agencies should refer or provide diagnostic testing for any employee who had close contact (within 6 feet for a combined total of 15 minutes or more during a 24-hour period) with persons with COVID-19 outside of work.

Federal agencies can consider providing diagnostic testing for employees who might have been in close contact (possible contacts) in the workplace with persons diagnosed with COVID-19.

- A risk-based approach to testing possible contacts of a worker with confirmed COVID-19 may be applied. Such an approach should take into consideration the likelihood of exposure, which is affected by the characteristics of the workplace and the results of contact investigations.

- Broader testing (i.e., testing beyond individually identified close contacts to those who are possible close contacts), such as targeting workers who worked in the same area and during the same shift, but not identified as close contacts, may be considered as part of a strategy to control the transmission of SARS-CoV-2 in the workplace. High-risk settings with potential for rapid and widespread dissemination of SARS-CoV-2 include:
    - Workplaces where workers are in the workplace for long periods (e.g., for 8–12 hours per shift) and have prolonged close contact with coworkers (e.g., working in an air traffic control tower).
    - Workplaces where employees live in communal living arrangements (e.g., workers on vessels or in wildland firefighter camps).
    - Workplaces with populations at increased risk for severe illness if they are infected and workplaces in rural areas or with older workers.
    - Workplaces where the risk to the government's mission is high if an outbreak occurs
- Onsite testing capacity, if developed, may be exceeded when many workers participate in broader testing. Performing Broad-Based Testing for SARS-CoV-2 provides consideration on the logistics of broader testing. Alternatively, broader testing can be performed at other testing locations.

Federal agencies can consider offering testing as part of an option to shorten the quarantine period to mitigate staffing shortages, but this is not the preferred option for reducing the risk of SARS-CoV-2 transmission.

- Federal agencies should consider workplace characteristics when determining if this additional transmission risk is acceptable (e.g., level of community transmission, ability to maintain physical distancing, proportion of employees at increased risk for severe illness, and priority of operations).

Screening Testing

Testing asymptomatic persons without known or suspected exposure to SARS-CoV-2

Viral testing of asymptomatic workers without known or suspected exposure to SARS-CoV-2 (screening testing) may be useful to detect SARS-CoV-2 early and stop transmission quickly, particularly in areas with community COVID-19 indicators in the moderate to high categorizations (Table 2, Table 3). Persons with asymptomatic or presymptomatic SARS-CoV-2 infection are significant contributors to SARS-CoV-2 transmission. Screening testing should be used as an addition to, not as a replacement for, other prevention strategies.

Fully vaccinated workers should continue to follow employer guidance, such as Executive Order on Protecting the Federal Workforce and Requiring Mask-Wearing and OMB Memorandum M-21-15, COVID-19 Safe Federal Workplace: Agency Model Safety Principles. Please see Interim Public Health Recommendations for Fully Vaccinated People for more information.

Types of federal workplaces that might consider implementing screening include:

- Workplaces at increased risk of introduction of SARS-CoV-2 (e.g., workplaces where workers are in close contact with the public or workplaces in communities with moderate to high transmission).
- Workplaces where there is a higher risk of SARS-CoV-2 exposure or transmission (e.g., workplaces where physical distancing is difficult and workers might be in close contact).
- Workplaces where SARS-CoV-2 infection among employees will lead to greater negative impact, such as
    - Workplaces in remote settings where medical evaluation or treatment may be delayed.
    - Workplaces where continuity of operations is a high priority.

- Workplaces with a high proportion of employees or other people (e.g., visitors) at increased risk for severe illness.
- Workplaces where there is a high likelihood of impacting mission critical activities.

Guidance for federal agencies implementing a screening testing program

Type of test

- Important attributes to consider when selecting the type of test or tests used for screening include ready availability, cost, and rapid turnaround time.
- A screening program with either NAATs or antigen tests could be effective in helping to prevent transmission.
- Table 1 summarizes some characteristics of NAATs and antigen tests to consider for a screening testing program.
- Employees with a positive NAAT result should not come to work and should isolate at home. A negative NAAT result is interpreted as no evidence of SARS-CoV-2 infection at the time when the testing specimen was collected. Employees who test negative should continue to take steps to protect themselves and others.
- Some antigen test results should be considered presumptive (preliminary results) and require confirmatory testing. Asymptomatic employees who have a positive antigen screening test result should undergo a laboratory-based confirmatory NAAT. They should not come to work and should quarantine at home during confirmatory testing. Refer to CDC's Interim Guidance for Antigen Testing for SARS-CoV-2 for more information on how to interpret antigen test results.

Table 1. NAATs and Antigen Test Differences to Consider When Planning a Screening Testing Program

Characteristic	NAATs	Antigen tests
Detection target	Viral ribonucleic acid (RNA)	Viral protein
Specimen type	Nasal, Nasopharyngeal, Oropharyngeal, Sputum (most tests), Saliva (few tests)	Nasal, Nasopharyngeal
Sensitivity	Varies by test, but generally high for laboratory-based tests but moderate to high for POC tests	Varies depending on the course of infection, but generally moderate-to-high at times of peak viral load*
Specificity	High	High
Advantages	Most sensitive test method available	Short turnaround time (approximately 15 minutes)
	Usually does not need to be repeated to confirm results	When performed at or near POC, allows for rapid identification of infected workers, thus preventing further virus transmission at the workplace
	Short turnaround time for NAAT POC tests, but few available	Lower cost per test
Disadvantages	Higher cost per test	May need confirmatory testing
	Longer turnaround time (1–3 days) is less effective for interrupting virus transmission, except for POC versions	Less sensitive (more false negative results) compared to NAATs, especially among asymptomatic people
	May detect viral RNA after risk of transmission has passed	

POC, point of care.

*The decreased sensitivity of antigen tests might be offset if the point-of-care antigen tests are repeated more frequently (i.e., serial testing at least weekly).

Frequency of screening testing

Serial testing is testing that is repeated over time (e.g., weekly), either on the same individual or on the same group (e.g., a workplace or segment of a workplace).

- Serial testing is primarily used for screening but could also be used for diagnostic purposes.
- Because there could be a delay between the time a person is exposed to the virus and the time the infection can be detected by testing, early testing after exposure at a single time point might miss many infections.
- Serial testing can be more likely to detect infection than testing done at a single point in time. It can also help identify persons who were originally not exposed nor infected but who subsequently became exposed and infected during the time between tests.

Federal workplaces should consider the following factors when determining the frequency of screening testing:

- Availability of testing, short turnaround time (e.g., same day), and cost.
- Latency time period between exposure and development of a positive SARS-CoV-2 viral test.
- Workplace characteristics.
- Level of community transmission (Table 2, Table 3).
- How many employees tested positive during previous rounds of testing.
- Relevant experience with outbreaks at the workplace.

Table 2. Community Indicators at the County Level@

Indicator	Low Transmission (Blue)	Moderate Transmission (Yellow)	Substantial Transmission (Orange)	High Transmission (Red)
Cumulative number of new cases per 100,000 persons within the last 7 days*	<10	10–49	50–99	≥100
Percentage of NAATs that are positive during the last 7 days†	<5%	5%–7.9%	8%–9.9%	≥10%

Indicators should be calculated for counties or core based statistical areas, although in rural areas with low population density, multiple jurisdictions might need to be combined to make the indicators more useful for decision-making. The indicators listed can be found by county on CDC's COVID Data Tracker Website under "county view."

@ If the two indicators suggest different transmission levels, the higher level should be selected.

* Number of new cases in the county (or other administrative level) in the last 7 days divided by the population in the county (or other administrative level) and multiplying by 100,000.

† Number of positive tests in the county (or other administrative level) during the last 7 days divided by the total number of tests resulted in the county (or other administrative level) during the last 7 days. Calculating Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) Laboratory Test Percent Positivity: CDC Methods and Considerations for Comparisons and Interpretation.

Table 3. Potential Actions based on Community Indicator Level

Prevention Strategy	Low Transmission (Blue)	Moderate Transmission (Yellow)	Substantial Transmission (Orange)	High Transmission (Red)
Facilitate diagnostic testing for symptomatic persons and all close contacts of cases				
Facilitate diagnostic testing for symptomatic persons and all close contacts of cases				
Implement screening testing of workplaces or segments of workplaces at least weekly plus facilitate diagnostic testing of symptomatic persons and close contacts				
Implement screening testing of workplaces or segments of workplaces at least weekly plus facilitate diagnostic testing of symptomatic persons and close contacts				

Other considerations

State, local, territorial, and tribal health departments may be able to provide assistance on any local context or guidance impacting a federal workplace.

Before testing a large proportion of asymptomatic workers without known or suspected exposure, federal agencies should have a plan in place for how they will do the following:

- Ensure access to clinical evaluation and confirmatory testing when needed.
- Ensure test results are reported to public health departments.
- Modify operations based on test results.
- Collaborate with public health departments in workplace case investigation and contact tracing.
- Manage a higher risk of false positive results in a low prevalence population.

Federal agencies should provide testing for employees traveling on official business in accordance with CDC guidance on domestic and international travel during COVID-19.

- All travelers are required to wear a mask on all planes, buses, trains, and other forms of public transportation traveling into, within, or out of the United States and in U.S. transportation hubs such as airports and stations.
- All travelers should know and follow all recommendations and requirements at every travel destination on their journey, including requirements for their home jurisdiction (i.e., all local, state, territorial and international requirements).
- All travelers should self-monitor for COVID-19 symptoms after travel.
- All air passengers coming to the United States, including U.S. citizens, are **required** to have a negative SARS-CoV-2 test result or documentation of recovery from COVID-19 before they board a flight to the United States.
- CDC recommends that unvaccinated travelers get tested with a viral test 1–3 days before travel and 3–5 days after travel, combined with a period of 7 days of self-quarantine. Employees should not travel if they have a positive test result or are awaiting results.
- Fully vaccinated travelers do not need to get tested before or after domestic travel or quarantine unless their destination requires it.

- For international travel, CDC recommends that fully vaccinated travelers do not need to get tested before leaving the United States unless the travel destination requires it. They should get tested 3–5 days after travel but do not need to quarantine fin the United States following international travel.

How to Determine Resolution of Infection

Federal agencies should follow CDC guidance on Disposition of Non-Hospitalized Patients with COVID-19.

- The decision to end isolation and return to the workplace for employees with suspected or confirmed SARS-CoV-2 infection should be made in the context of clinical and local circumstances.
- In most cases, a test-based strategy to end isolation and return to the workplace is not recommended.

Additional Resources

CDC

- CDC COVID-19 Website
- CDC Data Tracker
- Business and Workplaces
- General Business Frequently Asked Questions
- Overview of Testing for SARS-CoV-2 (COVID-19)
- Testing in Non-Healthcare Workplaces
- Testing Strategy for Coronavirus (COVID-19) in High-Density Critical Infrastructure Workplaces after a COVID-19 Case is Identified
- Public Health Recommendations for Fully Vaccinated People

OSHA

- OSHA COVID-19 Website
- Protecting Workers: Guidance on Mitigation and Preventing the Spread of COVID-19 in the Workplace
- OSHA Injury and Illness Recordkeeping and Reporting Requirements

FDA

- Emergency Use Authorizations (EUAs) for SARS-CoV-2 Diagnostic Tests

Exhibit E pg 10

- Recommending that if you had severe illness or have a weakened immune system, consult your doctor before ending isolation. Ending isolation without a viral test may not be an option for you. If you are unsure if your symptoms are moderate or severe or if you have a weakened immune system, talk to a healthcare provider for further guidance.
- Clarifying that after you have ended isolation, if your COVID-19 symptoms worsen, restart your isolation at day 0. Talk to a healthcare provider if you have questions about your symptoms or when to end isolation.
- Recommending screening testing of asymptomatic people without known exposures will no longer be recommended in most community settings.
- Emphasizing that physical distance is just one component of how to protect yourself and others. It is important to consider the risk in a particular setting, including local COVID-19 Community Levels and the important role of ventilation, when assessing the need to maintain physical distance.

Actions to take will continue to be informed by the COVID-19 Community Levels, launched in February. CDC will continue to focus efforts on preventing severe illness and post-COVID conditions, while ensuring everyone have the information and tools, they need to lower their risk.

This updated guidance is intended to apply to community settings. In the coming weeks CDC will work to align stand-alone guidance documents, such as those for healthcare settings, congregate settings at higher risk of transmission, and travel, with today's update.

###

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

CDC works 24/7 protecting America's health, safety and security. Whether disease start at home or abroad, are curable or preventable, chronic or acute, or from human activity or deliberate attack, CDC responds to America's most pressing health threats. CDC is headquartered in Atlanta and has experts located throughout the United States and the world.

Page last reviewed: August 11, 2022

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https://www.webmd.com › ... › Coronavirus › News

FDA Recalls E25Bio Rapid COVID-19 Antigen Tests - WebMD

Feb 19, 2022 -- The U.S. Food and Drug Administration has recalled E25Bio rapid COVID-19 tests because the tests were not approved by the agency, ...

https://www.usnews.com › News › Health News



More Than 2 Million COVID Home Test Kits Recalled Due ...

Nov 11, 2021 — THURSDAY, Nov. 11, 2021 (HealthDay News) -- A recall of Ellume at-home COVID-19 test kits has been expanded to include roughly 2 million of the ...

https://www.npr.org › 2021/11/11 › fda-recalling-2-millio...



FDA recalling 2 million Ellume at-home COVID-19 test kits ...

Nov 11, 2021 — The U.S. Food and Drug Administration has announced a recall of about 2 million at-home COVID-19 test kits made by the Australian-based ...

https://www.360dx.com › ... › Business News

Celltrion Recalls COVID-19 Point-of-Care Antigen Test Kits ...

May 3, 2022 — NEW YORK – Celltrion USA has recalled its point-of-care COVID-19 antigen test because it was potentially distributed to unauthorized users, ...

https://www.ellumecovidtest.com › return

Return - Ellume COVID-19 Home Test

Ellume COVID-19 Home Test Voluntary Recall ... In September 2021, we noted an increased chance that Ellume COVID-19 Home Tests from specific lots may provide an ...

https://www.nytimes.com › health › home-covid-test-kits



Home virus tests recalled over false positives reach 2 ...

Nov 10, 2021 — The Australian company Ellume has expanded a recall of its at-home coronavirus test because of concerns about a "higher-than-acceptable" rate of ...

https://www.nbcnewyork.com › local › recall-alert-local



COVID Test Recall: Skippack Pulled, FDA Says

May 11, 2022 — The Class 1 device recall for Skippack Medical Lab SARS-CoV-2 Antigen Rapid Test Kit (Colloidal Gold) is due to it being "distributed without ...

https://www.abc10.com › article › news › nation-world



Another at-home COVID test is being recalled - ABC10

Mar 17, 2022 — Acoording to a press release from the FDA, SD Biosensor is recalling its STANDARD Q COVID-19 Ag Home Tests because they were distributed to U.S. ...

https://www.fox4news.com › news › ellume-facing-class-a...



Ellume facing class action complaint over recalled COVID- ...

Mar 27, 2022 — The complaint alleges Ellume hasn't refunded customers who bought their COVID-19 at-home test kits that were later recalled for ...

Exhibit F

https://www.wfxrtv.com › news › health › coronavirus



FDA recalls illegally imported COVID-19 Ag Home Test kits

Feb 7, 2022 — (WFXR) — The U.S. Food and Drug Administration (FDA) has posted a recall for a COVID-19 Ag Home Test because there are reports of the test ...

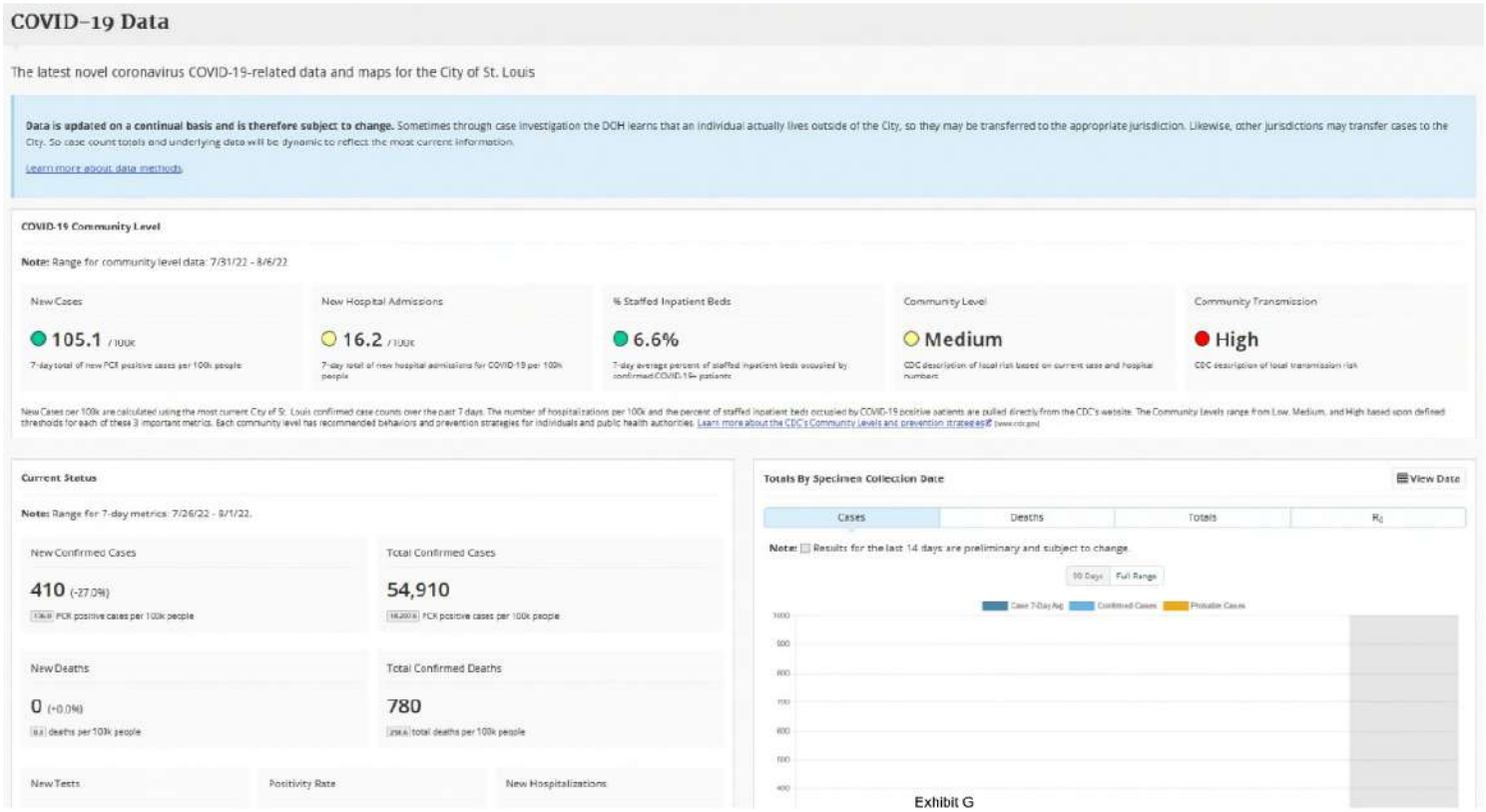

COVID-19 Data
The latest novel coronavirus COVID-19-related data and maps for the City of St. Louis
Data is updated on a continual basis and is therefore subject to change. Sometimes through case investigation the DOH learns that an individual actually lives outside of the City, so they may be transferred to the appropriate jurisdiction. Likewise, other jurisdictions may transfer cases to the City. So case count totals and underlying data will be dynamic to reflect the most current information.
Learn more about data methods.
COVID-19 Community Level
Note: Range for community level data: 7/31/22 - 8/6/22
New Cases
105.1 /100K
7-day total of new PCR positive cases per 100k people
New Hospital Admissions
16.2 /100K
7-day total of new hospital admissions for COVID-19 per 100k people
% Staffed Inpatient Beds
6.6%
7-day average percent of staffed inpatient beds occupied by confirmed COVID-19+ patients
Community Level
Medium
CDC description of local risk based on current case and hospital numbers
Community Transmission
High
CDC description of local transmission risk
New Cases per 100k are calculated using the most current City of St. Louis confirmed case counts over the past 7 days. The number of hospitalizations per 100k and the percent of staffed inpatient beds occupied by COVID-19 positive patients are pulled directly from the CDC's website. The Community Levels range from Low, Medium, and High based upon defined thresholds for each of these 3 important metrics. Each community level has recommended behaviors and prevention strategies for individuals and public health authorities. Learn more about the CDC's Community Levels and prevention strategies
Current Status
Note: Range for 7-day metrics: 7/26/22 - 8/1/22.
New Confirmed Cases
410 (-27.0%)
PCR positive cases per 100k people
Total Confirmed Cases
54,910
PCR positive cases per 100k people
New Deaths
0 (+0.0%)
deaths per 100k people
Total Confirmed Deaths
780
total deaths per 100k people
New Tests
Positivity Rate
New Hospitalizations
Totals By Specimen Collection Date
View Data
Cases
Deaths
Totals
Rt
Note: Results for the last 14 days are preliminary and subject to change.
30 Days
Full Range
Case 7-Day Avg
Confirmed Cases
Probable Cases

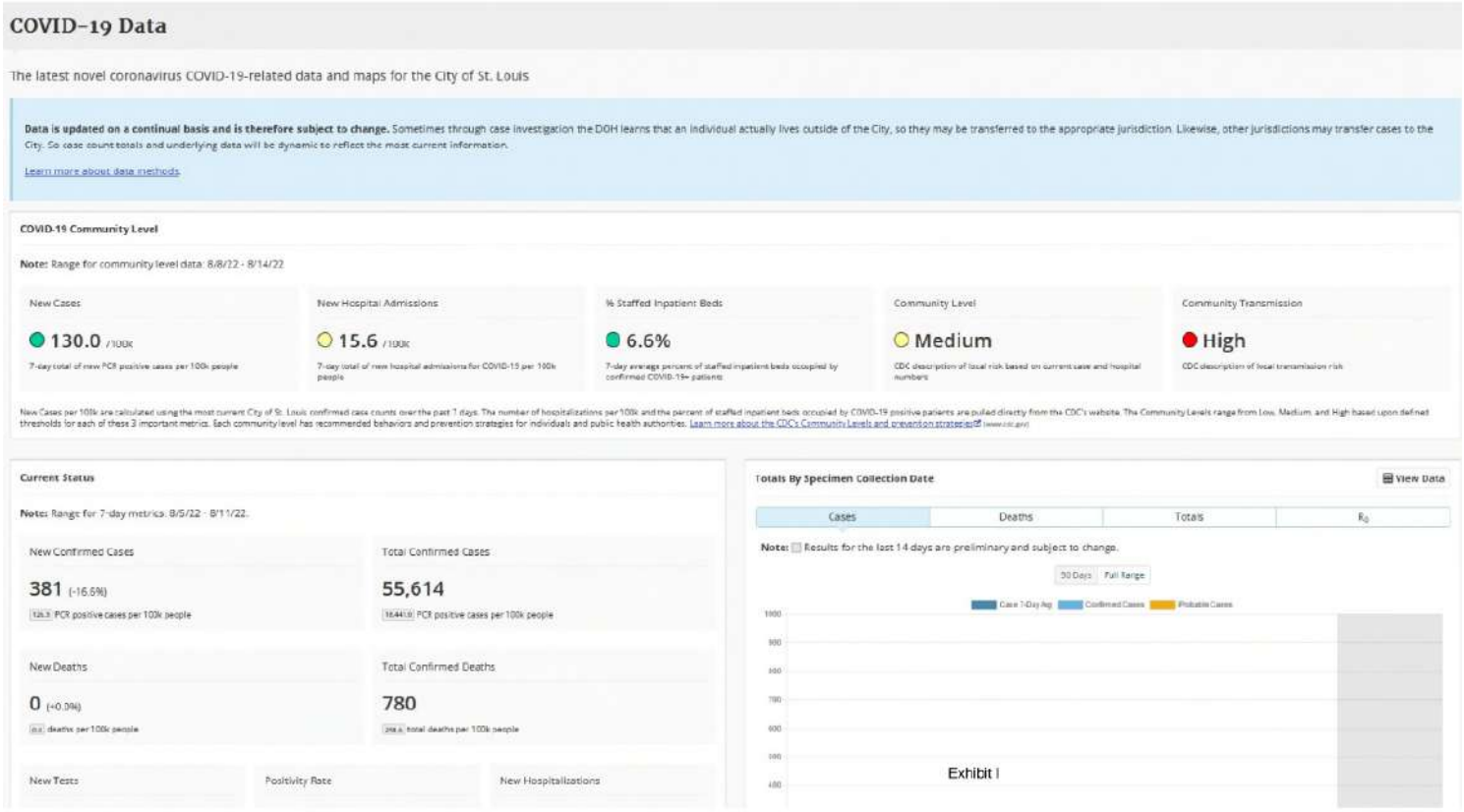
Exhibit G

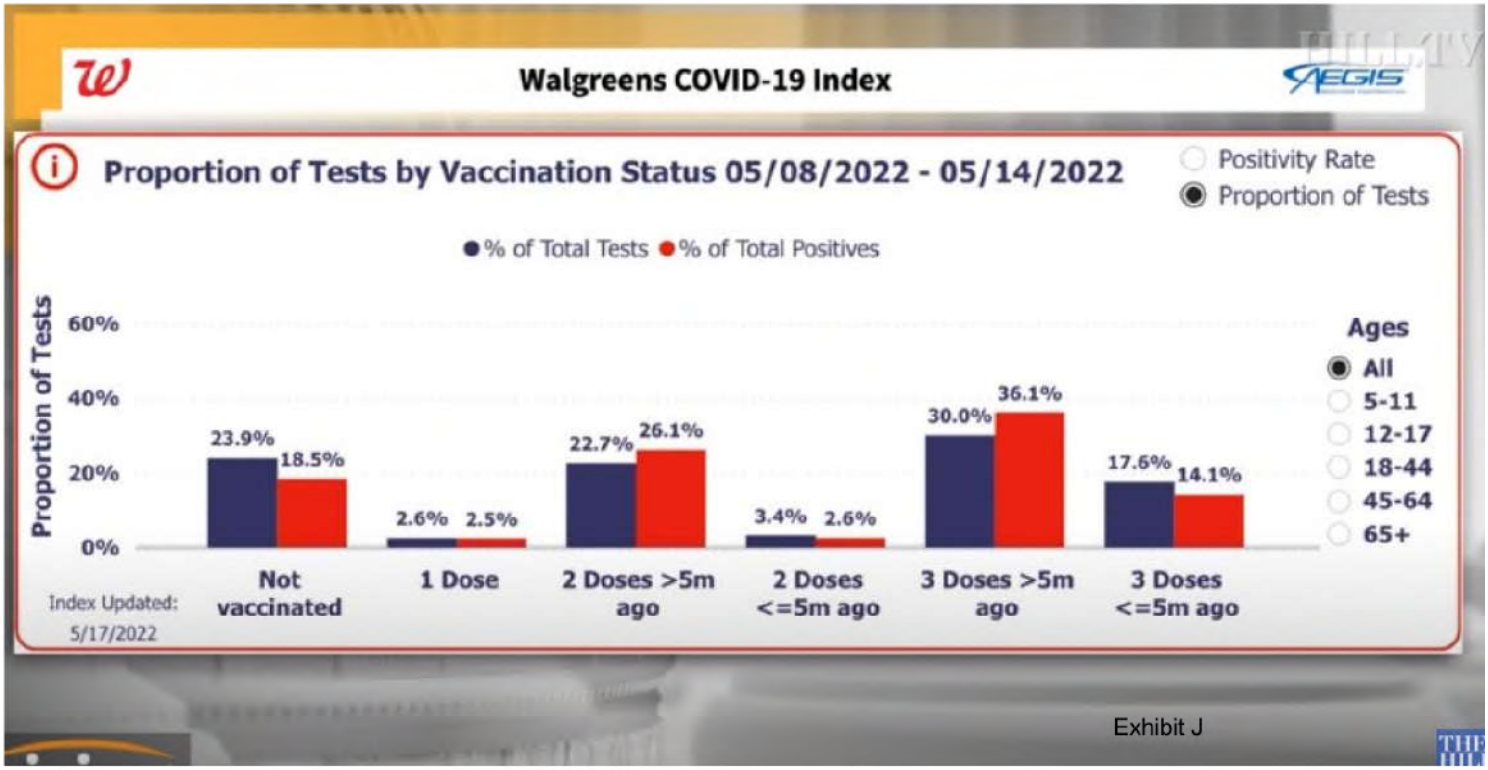
From: **Safer GSA Workforce**
<safergsaworkforce@gsa.gov>
Date: Mon, Aug 15, 2022 at 8:31 AM
Subject: Important Information Regarding COVID-19 Screening Testing
To: Safer GSA Workforce
<safergsaworkforce@gsa.gov>

The GSA Screening Testing Program will be suspended beginning today, 8/15/2022. All employees reporting to a GSA facility in an area of high or medium community level will no longer be required to complete screening testing prior to facility entry.

GSA is currently reviewing new COVID-19 guidance released from the Centers for Disease Control and Prevention (CDC) and the Safer Federal Workforce Task Force (SFWTF) and will be providing additional information soon.

Exhibit H


COVID-19 Data
The latest novel coronavirus COVID-19-related data and maps for the City of St. Louis
Data is updated on a continual basis and is therefore subject to change. Sometimes through case investigation the DOH learns that an individual actually lives outside of the City, so they may be transferred to the appropriate jurisdiction. Likewise, other jurisdictions may transfer cases to the City. So case count totals and underlying data will be dynamic to reflect the most current information.
Learn more about data methods.
COVID-19 Community Level
Note: Range for community level data: 8/8/22 - 8/14/22
New Cases
130.0 /100K
7-day total of new PCR positive cases per 100k people
New Hospital Admissions
15.6 /100K
7-day total of new hospital admissions for COVID-19 per 100k people
% Staffed Inpatient Beds
6.6%
7-day average percent of staffed inpatient beds occupied by confirmed COVID-19+ patients
Community Level
Medium
CDC description of local risk based on current case and hospital numbers
Community Transmission
High
CDC description of local transmission risk
New Cases per 100k are calculated using the most current City of St. Louis confirmed case counts over the past 7 days. The number of hospitalizations per 100k and the percent of staffed inpatient beds occupied by COVID-19 positive patients are pulled directly from the CDC's website. The Community Levels range from Low, Medium, and High based upon defined thresholds for each of these 3 important metrics. Each community level has recommended behaviors and prevention strategies for individuals and public health authorities. Learn more about the CDC's Community Levels and prevention strategies
Current Status
Note: Range for 7-day metrics: 8/5/22 - 8/11/22.
New Confirmed Cases
381 (-16.6%)
126.3 PCR positive cases per 100k people
Total Confirmed Cases
55,614
18,441.9 PCR positive cases per 100k people
New Deaths
0 (+0.0%)
0.0 deaths per 100k people
Total Confirmed Deaths
780
258.6 total deaths per 100k people
New Tests
Positivity Rate
New Hospitalizations
Totals By Specimen Collection Date
View Data
Cases
Deaths
Totals
R_0
Note: Results for the last 14 days are preliminary and subject to change.
30 Days
Full Range
Case 7-Day Avg
Confirmed Cases
Probable Cases
1000
900
800
700
600
500
400
Exhibit I


Walgreens COVID-19 Index
Proportion of Tests by Vaccination Status 05/08/2022 - 05/14/2022
Positivity Rate
Proportion of Tests
% of Total Tests
% of Total Positives
Proportion of Tests
60%
40%
20%
0%
23.9%
18.5%
2.6%
2.5%
22.7%
26.1%
3.4%
2.6%
30.0%
36.1%
17.6%
14.1%
Not vaccinated
1 Dose
2 Doses >5m ago
2 Doses <=5m ago
3 Doses >5m ago
3 Doses <=5m ago
Ages
All
5-11
12-17
18-44
45-64
65+
Index Updated:
5/17/2022
Exhibit J

from a foreign duty station, an employee is permitted to retain the higher leave balance, up to 360 hours, as the personal leave ceiling. An individual with a leave ceiling above 240 hours has that higher leave ceiling permanently reduced in any leave year in which the annual leave balance at the end of the leave year is less than it was at the start of the leave year IAW Reference (a).

2. Advanced Annual Leave.

a. Permanent employees may request advanced annual leave up to the number of hours of leave that will be accrued by the employee during the remainder of the leave year. New employees are eligible to receive advanced annual leave with the exception noted in paragraph 2.b. NGA advances annual leave irrespective of existing leave balances.

b. When an employee is serving under a temporary appointment or under the two-year trial period, annual leave advanced should not exceed the amount that will be subsequently earned before the not-to-exceed date of the appointment or the trial period end.

c. An employee is required to repay advanced annual leave, except in very limited circumstances (e.g., disability, retirement, or death). A supervisor should not advance annual leave when it is known (or reasonably expected) that the employee will not return to duty. An employee who leaves Federal service prior to complete repayment of advanced leave is required to repay the remaining balance IAW Reference (n).

3. Restored Annual Leave. Supervisors and employees coordinate leave use to prevent forfeiture at the end of the leave year because the employee exceeded the maximum carry-over allowed. If leave is approved for restoration, it is restored to the employee for a period of two years and carried in a separate restored leave account in the employee's Leave and Earnings Statement (LES), IAW Reference (n). Restored annual leave must be scheduled and used no later than two years after the termination date described in 1(b) IAW References (n) and (r).

a. Conditions for restoration. Annual leave in excess of the permitted carry-over may be restored, when validated on a case-by-case basis, in the following situations:

(1) Administrative error. When an administrative error causes the forfeiture of annual leave, the leave may be restored retroactively.

(2) Exigencies of public business. Annual leave lost through exigencies of public business may be restored if the annual leave was scheduled and approved in writing or electronically before the start of the third biweekly pay period prior to the end of leave year. Supervisors and employees must ensure employees' leave is scheduled and approved before this date.

Exhibit K

(2) A full-time employee who is caring for a family member(s) with a serious health condition may use up to 480 hours of sick leave in a leave year. A part-time employee may be granted an amount of sick leave equal to 12 times the average number of hours in the employee's scheduled tour of duty each week IAW Reference (n).

(3) If an employee previously has used any portion of the 104 hours of sick leave for general family care or bereavement purposes in a leave year, the amount is subtracted from the 480-hour entitlement. An employee is entitled to no more than a combined total of 480 hours of sick leave each leave year for all family care purposes.

3. Advanced Sick Leave. NGA may advance sick leave to an employee, for the same reasons it grants sick leave to an employee, subject to the limitations described below. Advanced sick leave is not granted if it is considered likely that the employee will not return to duty for a sufficient period of time to repay the advanced leave (e.g., anticipated retirement or separation). Because advanced sick leave must be repaid, advance sick leave should not be granted when it is known (or reasonably expected) at the time advanced sick leave is requested that the employee will not be returning to duty.

a. NGA may advance up to 104 hours of sick leave to a full-time employee (for a part-time employee, amounts are prorated based on the number of hours in the employee's workweek) IAW Reference (n):

(1) To receive medical, dental, or optical examination or treatment.

(2) To provide care for a family member who is incapacitated by a medical or mental condition, or to tend to a family member receiving medical, dental, or optical examination or treatment.

(3) To provide care for a family member who would, as determined by the health authorities having jurisdiction, or by a health care provider, jeopardize the health of others by that family member's presence in the community because of exposure to a communicable disease.

(4) To make arrangements necessitated by the death of a family member, or to attend the funeral of a family member.

b. NGA may advance up to 240 hours of sick leave to a full-time employee (for a part-time employee, amounts are prorated based on the number of hours in the employee's workweek) IAW Reference (n):

(1) Who is incapacitated for the performance of their duties by physical or mental illness, injury, pregnancy, or childbirth.

(2) For a serious health condition of the employee or a family member.

(3) When the employee would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by their presence on the job because of exposure to a communicable disease.

(4) For the care of a covered service member with a serious injury or illness, provided the employee is exercising their entitlement to FMLA leave to care for a covered service member IAW Reference (a).

(5) For purposes related to the adoption of a child.

c. The immediate supervisor may grant an employee's request for advanced sick leave (up to 240 hours) IAW sick leave laws and regulations for childbirth, adoption, or foster care. An employee caring for a family member who is a birth mother is entitled to use sick leave for the mother's prenatal care, any period of incapacity due to her pregnancy, including severe morning sickness or medically prescribed bed rest, childbirth, for the mother's recovery from childbirth, or for the purposes relating to the adoption of a child. Employees may not use sick leave to bond with or care for a healthy newborn, adopted, or foster child. New employees are eligible to receive advanced sick leave. NGA grants advanced sick leave irrespective of the employee's existing annual leave balance.

d. An immediate supervisor may advance a maximum of 104 hours per event. A second-level supervisor or management official may approve additional hours for a maximum advancement not to exceed 240 hours IAW Reference (n). The following criteria may be considered when determining whether to grant advanced sick leave:

(1) An employee's tenure in their appointment.

(2) The established pattern of sick leave usage.

(3) Stability of the employment record to include performance and conduct.

(4) Whether advanced sick leave is justified by the situation.

e. As an employee accrues sick leave, sick leave is credited to the negative sick leave balance until the advance of sick leave has been paid back in full.

f. An employee who leaves Federal service prior to complete repayment of advanced sick leave is required to repay the remaining balance. Repayment may be taken from the employee's final pay, lump-sum leave payment, or amounts due the employee from any source including travel and transportation. An employee approved for disability retirement by OPM who dies or is separated or resigns because of disability does not repay advanced sick leave IAW Reference (n).

Exhibit L

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CENTRAL REGIONAL OFFICE

CHRIS J. KROENUNG,
Appellant,

v.

DEPARTMENT OF DEFENSE,
Agency.

DOCKET NUMBER
CH-0752-23-0234-I-1

DATE: January 12, 2024

ORDER AND SUMMARY OF PREHEARING CONFERENCE

On January 12, 2024, I held a prehearing conference attended by counsel for the parties. The following is a summary of topics discussed, along with my rulings on any motions addressed during the conference.

Agency's Prehearing Submission

During the conference we discussed the parties' respective prehearing submissions. All proposed agency witnesses were approved:

- Justin Nahlik
- Jo-Ellen Adkins
- Vietta Williams

The agency's proposed exhibits 1-8 included in its prehearing submission were admitted without objection. *See* Initial Appeal File (IAF), Tab 29.

Appellant's Prehearing Submission

The appellant's proposed witnesses were approved as follows:

- Chris Kroenung (appellant)

- Vietta Williamsd
- Justin Nahlik

Upon further discussion during the prehearing conference, the parties will attempt to reach agreed-upon stipulations as to the proffered testimony of Mike Glascock, Andrew Katze, and Don Leggins, who the appellant contends are comparators who are expected to testify as to the agency's disparate application of its COVID testing policies. If hearing testimony establishes facts inconsistent with their proffered stipulations, I may permit the parties to call these individuals as rebuttal witnesses upon good cause shown.

The agency also objected to Brent Markem on the basis that his is the Deputy Director of NGA who was not involved in the appellant's discipline, and that other agency witnesses will be able to testify as to the policies that were the basis for the appellant's discipline. I sustained the agency's objection for the reason that other agency witnesses will be competent to testify as to the agency's policies and procedures with regard to COVID testing during the relevant timeframe.

The appellant's proposed exhibits A-J were admitted. IAF, Tab 30.

Hearing Information and Logistics

The hearing will be conducted over Zoom for Government (ZfG) teleconference. The link and relevant information for joining the hearing was previously provided in the Hearing Order. The parties, counsel, and any witnesses will need to have stable internet access as well as a camera and microphone. The parties are responsible for distributing the hearing information to their respective witnesses. We will begin promptly at 9:00 a.m., CST, on January 17, 2024. No outside video or audio recordings are allowed, and the parties are expected to adhere to the ZfG Rules of Behavior.

The parties will not be required to make opening statements. The agency will present its case-in-chief first. The appellant will testify during his case-in-chief.

Legal Standards and Agency's Burden of Proof

The appellant, Chris Kroenung, was employed with National Geospatial-Intelligence Agency as an Aeronautical Analyst. He was removed from his position, effective March 4, 2023, based on a charge of conduct unbecoming a federal employee as a result of his refusal to abide by the agency's COVID testing policy and procedures as detailed in the notice of proposed removal dated October 24, 2022. *See* IAF, Tab 5 (agency file).

To sustain an adverse action before the Board, the agency must prove by preponderant evidence the factual basis for the misconduct charged, and establish that disciplinary action, based on the proven misconduct, promotes the efficiency of the service. *See* 5 U.S.C. §§ 7513(a) and 7701(c)(1)(B); 5 C.F.R. § 1201.56(a)(ii). Preponderant evidence is the degree of relevant evidence that a 4 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). The "efficiency of the service" requirement includes a showing that some disciplinary action is warranted (*i.e.*, the "nexus" requirement) and that the particular penalty imposed by the agency is within the tolerable limits of reasonableness. Thus, three distinct elements must be proven by the agency in any adverse action. *Pope v. U.S. Postal Service*, 114 F.3d 1144, 1147 (Fed. Cir. 1997); *Douglas v. Veterans Administration*, 5 M.S.P.R. 280, 302-303 n. 67, 307- 308 (1981). Proof of one or more specifications supporting a charge is sufficient to sustain the charge. *See Greenough v. Department of the Army*, 73 M.S.P.R. 648, 657 (1997); *James v. Department of the Air Force*, 73 M.S.P.R. 300, 303 (1997).

Inappropriate Conduct

A charge of inappropriate conduct or conduct unbecoming is a generic charge in which the agency is required to prove by preponderant evidence that the appellant engaged in certain described conduct and that the conduct was improper, unsuitable, or detracted from the appellant's character or reputation. *See LaChance v. Merit Systems Protection Board*, 147 F.3d 1367, 1372 (Fed. Cir. 1998). The justification and supporting facts upon which the agency's removal decision is based are set forth in the proposed removal and decision letter.

Affirmative Defenses

The appellant has not raised any specific affirmative defenses to the charged conduct and will contest the merits of the charge as well as the agency's application of the Douglas factors.

Status of Settlement Discussions

The parties continue to discuss potential settlement options and will report any developments to me as soon as possible by contacting the Central Regional Office.

Corrections to Prehearing Conference Summary

If either party objects to the summary contained herein, that party must notify the Board of any such objections in writing to be submitted not later than Tuesday, January 16, 2024

FOR THE BOARD:

David R Lidow

David Lidow
Administrative Judge

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CENTRAL REGIONAL OFFICE

CHRIS J. KROENUNG	)	DOCKET NUMBER
	)	CH-0752-23-0234-I-1
Appellant,	)	
	)	
v.	)	
	)	
DEPARTMENT OF DEFENSE	)	
	)	DATE: January 17, 2023
Agency.	)	

PROPOSED TESTIMONIAL STIPULATIONS

The parties stipulate that the following would be the testimony of the following witnesses.

Chris Kroenung

1. Mr. Kroenung, after returning from leave, chose to return to Geo-Areas, and the Agency told him that he needed to be re-trained in Geo-Areas, and that training could not be remote.

2. Despite moving physically to Geo-Areas, Mr. Kroenung was never moved in the Agency's system, and Justin Nahlik remained his supervisor.

Andrew Katze

1. Andrew Katze is a Supervisor within Terminal En Route Procedures (TERPS).

2. He was temporarily a branch chief for Terps months while Justin Nahlik was on leave to teach, from September 13, 2020 to July 17, 2021.

3. Mr. Katze was on-site and would have meetings, planning sessions, and other in-person tasks.
    a. Meetings were limited, however, when community levels were medium to high.

4. Mr. Katze was unvaccinated.

5. Mr. Katze put in a religious accommodation request to not get vaccinated.

6. In early 2022, the Agency began requiring Mr. Katze to test in order to come to work with a signed attestation that he had tested.

7. Perceiving a lack of guidance on how the Agency would like to receive the requested attestation, he created his own form with an area for a witness signature.

8. His wife usually signed the witness attestation for him.

9. On two occasions, the witness was his daughter, who was a minor at the time.

10. Mr. Katze never asked for an accommodation for testing, but rather just began testing at home using the attestation form he created after reading the policy carefully.

11. Mr. Katze informed his supervisor, Paul McLaughlin, on multiple occasions that he believed the testing was illegal.

12. Mr. Katze formed the impression from his meetings with other managers that management held the unvaccinated and those with objections to testing in low esteem.

13. They would refer to these employees in a derogatory manner, using terms like "problem child" and "pain in the ass."

14. Mr. Katze's impression does not amount to knowledge of the reasons for Appellant's removal.

15. Mr. Katze has a friend who received the vaccine and he believes, along with that friend, that the vaccine caused a significant and life-threatening illness.

16. Mr. Katze was not under the supervision of Mr. Nahlik.

17. Mr. Katze is aware that his colleague, Dave Atkinson, never tested but was allowed on at least two occasions to come in person to work for meetings that management asked for him to attend in person.

18. Mr. Katze is aware of this because of his friendship with Mr. Atkinson, whose work station is about 30 feet from his own. The two of them speak with one another about once a week.

Mike Glascock

1. Mr. Glascock is an Aeronautical Analyst.

2. He worked in Geo-Areas and arrived there at roughly the same time that Mr. Kroenung arrived there.

3. Mr. Glascock returned to Geo-Areas and completed his training there within two months.

4. Mr. Glascock requested a religious exemption for the vaccine but never received an answer from management.

5. Because of that experience, although he objected to testing, he did not request an accommodation, judging it to an endeavor that would not produce any results or solutions.

6. Mr. Glascock complied with testing requirements.

7. Mr. Glascock is still employed at NGA.

8. Mr. Glascock would be able to testify to the details of the 2022 Christmas Party / Open House.

    a. This occurred in December 2022.
    b. The community COVID levels were medium to high throughout all of December 2022, and in any case were medium or high during the Open House.
    c. The Agency did not require visitors to the open house to test.
    d. The Christmas Open House did not occur at any point from 2004, when Mr. Kroenung began his employment with NGA, until 2022.
    e. Mr. Glascock was not in a position to know which attendees were vaccinated, which actually tested, and which ones had accommodations in place.

Don Leggins

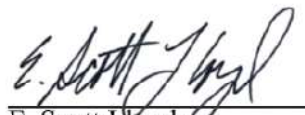
1. Mr. Leggins works as an IT Analyst.

2. Mr. Leggins submitted a request for, and received, a reasonable accommodation for the testing requirement.

3. Since IT personnel were not eligible for telework, he asked for accommodation to the testing requirement.

4. Mr. Leggins assumed work duties consistent with telework as a result of his request for reasonable accommodation.

Respectfully Submitted,



E. Scott Lloyd
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Front Royal, VA 22630
(540) 823-1110
scott@lloydlemmonhale.com
Counsel for Appellant

CASE NAME: CHRIS J. KROENUNG v. DEPARTMENT OF DEFENSE
DOCKET NUMBER: CH-0752-24-0234-I-1
BEFORE: ADMINISTRATIVE JUDGE DAVID R. LIDOW JANUARY 17, 2024

TRACK 1001

00:00:01 ---------- 00:02:40 ---------- OPENING REMARKS ---------- JUDGE LIDOW

WITNESS: JUSTIN MATTHEW NAHLIK
00:02:41 ---------- 00:30:26 ---------- DIRECT ---------- DAILEY
00:30:27 ---------- 00:55:43 ---------- CROSS ---------- LLOYD
00:55:44 ---------- 00:58:10 ---------- DIRECT ---------- DAILEY
00:58:11 ---------- 00:55:43 ---------- CROSS ---------- LLOYD

WITNESS: JO-ELLEN ADKINS
00:55:44 ---------- 01:00:00 ---------- DIRECT ---------- DAILEY

TRACK 1002

WITNESS: JO-ELLEN ADKINS (CON'T.)
00:00:01 ---------- 00:11:00 ---------- DIRECT ---------- DAILEY
00:11:01 ---------- 00:28:54 ---------- CROSS ---------- LLOYD
00:28:55 ---------- 00:29:18 ---------- REDIRECT ---------- DAILEY
00:29:19 ---------- 00:30:34 ---------- RECROSS ---------- LLOYD

WITNESS: VIETTA SHIRL WILLIAMS
00:30:35 ---------- 00:39:46 ---------- DIRECT ---------- DAILEY
00:39:47 ---------- 00:52:24 ---------- CROSS ---------- LLOYD

WITNESS: CHRIS J. KROENUNG
00:52:25 ---------- 01:00:00 ---------- DIRECT ---------- LLOYD

CASE NAME: CHRIS J. KROENUNG v. DEPARTMENT OF DEFENSE
DOCKET NUMBER: CH-0752-24-0234-I-1
BEFORE: ADMINISTRATIVE JUDGE DAVID R. LIDOW JANUARY 17, 2024

TRACK 1003

WITNESS: CHRIS J. KROENUNG (CON'T.)

00:00:01 ---------- 00:23:40 ---------- DIRECT ---------- LLOYD
00:23:41 ---------- 00:28:41 ---------- CROSS ---------- DAILEY
00:28:42 ---------- 00:30:06 ---------- REDIRECT ---------- LLOYD

00:30:07 ---------- 00:39:34 ---------- CLOSING REMARKS ---------- DAILEY
00:39:35 ---------- 00:48:39 ---------- CLOSING REMARKS ---------- LLOYD
00:48:40 ---------- 00:49:19 ---------- CLOSING REMARKS ---------- DAILEY
00:49:20 ---------- 00:50:35 ---------- CLOSING REMARKS ---------- JUDGE LIDOW

AUTHENTICITY CERTIFICATE

"This is to certify the proceedings before

ADMINISTRATIVE JUDGE David R. Lidow of the

Regional (field) Office, U.S. Merit Systems Protection Board,

in the matter of:

CHRIS J. KROENUNG
(Appellant)

vs.

DEPARTMENT OF DEFENSE
(Agency)

DOCKET NUMBER: CH-0752-23-0234-I-1

at Chicago, Illinois,
(City/State)

on Wednesday, January 17th, 2024,
(Date)

were held as herein recorded and that these are the original monitored hearing tape(s)/CD-Rom(s) thereof."

Stuart Kerr
(Court Reporter)

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CENTRAL REGIONAL OFFICE

CHRIS J. KROENUNG, Appellant,) Docket No.
v.) CH-0752-23-0234-I-1
DEPARTMENT OF DEFENSE, Agency.)

Merit Systems Protection Board
Kluczynski Federal Building
230 South Dearborn Street
Zoom for Government
Chicago, Illinois 60604

Wednesday,
January 17, 2024

The above-entitled matter came on for hearing, pursuant to notice, at 8:30 a.m.

BEFORE: DAVID R. LIDOW
Administrative Judge

APPEARANCES:

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I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Justin Mathew Nahlik	7	30	43	46
Jo-Ellen Adkins	48	55	64	64
Vietta Shirl Williams	66	72		
Chris J. Kroenung	81	101	105	

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P R O C E E D I N G S

(8:38 a.m.)

ADMINISTRATIVE JUDGE LIDOW: Good morning, everyone. This is Administrative Judge David Lidow. We're convening this morning for a hearing in the matter of Chris Kroenung v. The Department of Defense. It's Case No. CH-0752-23-0234-I-1. It is Wednesday, January 17th, 2024 at approximately 8:37 a.m. Central Time.

Can I ask the parties just to state their names and appearances for the record, please? We can start with the Appellant, Mr. Kroenung.

MR. KROENUNG: Chris Kroenung. What else did you want me to answer?

ADMINISTRATIVE JUDGE LIDOW: Oh, that's it, and then the rest of the attorneys can go now.

MR. LLOYD: Okay, so Scott Lloyd appearing for, as the Attorney for Appellant, Mr. Chris Kroenung.

ADMINISTRATIVE JUDGE LIDOW: Okay, and for the Agency?

MR. DAILEY: Dennis Dailey, Your Honor, on behalf of the National Geospatial-Intelligence Agency.

MR. FORSGREN: And Ben Forsgren for the Agency, as well.

ADMINISTRATIVE JUDGE LIDOW: Okay, perfect, thanks.

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So, this hearing is being conducted via Zoom for Government. I've instructed the parties that there are no outside recordings permitted, with the exception of the court reporter's audio recording.

Just a few preliminary matters before we begin with witness testimony. The parties filed, this morning, some agreed stipulations, which I've accepted into the record. I've issued the pre-hearing conference Summary and Order, which the parties have not raised any objection to.

So, I think the record is now complete, with the exception of the hearing testimony. So, we can go ahead and get started. There's a witness in the waiting room, Mr. Dailey, and that is Justin Nahlik.

Is he the Agency's first witness?

MR. DAILEY: He is, Your Honor.

ADMINISTRATIVE JUDGE LIDOW: Okay, so I'm going to go ahead and admit him now.

Mr. Nahlik, good morning. You're muted.

MR. NAHLIK: Okay, good morning. How are you, sir?

ADMINISTRATIVE JUDGE LIDOW: Good morning. Fine, thank you. Thanks for waiting. You're going to be the first witness, and I just want to make sure, before we go on the record, that you can see everyone and hear everyone

okay. Presumably you can.

MR. NAHLIK: Yeah, it looks like it.

ADMINISTRATIVE JUDGE LIDOW: Okay, very good. So, Mr. Dailey, is the Agency ready to call its first witness?

MR. DAILEY: We are, Your Honor.

ADMINISTRATIVE JUDGE LIDOW: And who would that be?

MR. DAILEY: Justin Nahlik.

ADMINISTRATIVE JUDGE LIDOW: Okay, and I've admitted Mr. Nahlik into the hearing space.

Good morning, sir. Can I ask you to raise your right hand?

(Witness sworn.)

Whereupon,

JUSTIN MATHEW NAHLIK,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

ADMINISTRATIVE JUDGE LIDOW: And could I ask you to state and spell your full name for the record, please?

THE WITNESS: Justin Mathew Nahlik, J-u-s-t-i-n, Mathew is M-a-t-h-e-w. Last name is Nahlik, N-a-h-l-i-k.

ADMINISTRATIVE JUDGE LIDO: Great, thank you very much.

Mr. Daily, whenever you're ready.

DIRECT EXAMINATION

BY MR. DAILEY:

Q Good morning, Mr. Nahlik. What was your position in August, 2022?

A Supervisor in NGA.

Q In that position, did you supervise Mr. Kroenung?

A I did.

Q Can you give me just a brief, kind of general, unclassified, of course, idea of what Mr. Kroenung did for the NGA?

A For my branch, he was a Terminal Instrument Designer. So, he developed procedures for military pilots to fly to, fly in and land in airports.

Q Okay, I'm going to show you some exhibits as we talk today, and I'm going to start with Agency Exhibit No. 1. Stand by just a moment, please.

Mr. Nahlik, can you see that on the screen?

A I can.

Q Okay, can you tell me what this document is?

A It looks like the DoD policy for vaccinated and unvaccinated employees.

Q So, I want to draw your attention to page one of the exhibit under Subsection 2 titled DoD civilian employees.

Can you read the first sentence in that last

paragraph, beginning with at least weekly?

A At least weekly, COVID-19 testing is required to, for those DoD civilian employees who are not fully vaccinated and the CDC COVID-19 community level is high or medium in the country or equivalent jurisdiction where the DoD facility is located.

Q And can you read that date at the top of that document?

A August 8th, 2022.

Q So, was this the policy in place in August, 2022?

A It was.

Q And what did it mean to you that, well what did that policy mean to you in that sense that you just read?

A Any employee that is not vaccinated is required to show a COVID-19 test before they can into work that day.

Q And what was your understanding of Mr. Kroenung's vaccination status prior to his removal from the Agency?

A He was an unvaccinated employee.

Q Okay, I'd like to show you Agency Exhibit No. 7. Can you tell me what that document is?

A It looks like an MFR.

Q And can you, did you draft this one?

A It looks like it.

Q Can you tell me -- I'm sorry, can you read that first paragraph under the background heading?

A Mr. Chris, Christopher Kroenung SFAGC is a non-vaccinated employee who has refused to comply with NGA's Covid testing protocols since implementation of the requirement. Based on this non-compliance, he was issued a Letter of Reprimand in February, first offense, and received a 10-day suspension in July, second offense.

Q So, the document starts off by saying that he was an unvaccinated employee. What vaccination are you referring to there?

A The COVID-19 vaccination.

Q And how did you know he was unvaccinated against COVID-19?

A Chris told us many times that he was not vaccinated, and I think in PeopleSoft he, he refused to, or I think in PeopleSoft he said that, as well.

Q So, under the DoD policy you just read a minute ago, would Mr. Kroenung, as an unvaccinated employee be required to test for COVID-19 prior to entering DoD facilities?

A He would.

Q And you just read in the memo that he consistently refused to comply with test requirements since they were implemented? Do you recall his reasoning for refusing to comply with testing requirements?

A He thought they were unlawful and, and he refused

to do it. He thought it was unlawful.

Q And you read that Mr. Kroenung was initially issued a Letter of Reprimand in February, 2022 for his first offense?

A Yes, sir.

Q I'd like to show you a document located in the initial Agency file on page 57. Can you see that?

A I can.

Q Is this the Letter of Reprimand you were referring to in your memo?

A It is.

Q So, the specification here is on page 58. Why did you read -- I'm sorry, why did you issue Mr. Kroenung this Letter or Reprimand?

A He refused to, he refused to test before he came into NGA facilities.

Q Can you please look at the second paragraph under Section 3, and read that second sentence in the paragraph beginning with please be advised?

A Please be advised that you have seven calendar days from the date of this notice to comply with the Agency COVID-19 testing program.

Q Did he comply with the seven calendar days?

A He did not.

Q Did he comply sometime after the seven calendar

days?

A He did not.

Q Please look at the next section, Section 4, regarding reasonable accommodation. Why was that paragraph included in the reprimand here?

A As I understand it, Chris could have applied for a reasonable accommodation to not do the testing program.

Q Did Mr. Kroenung ever request a religious or a medical accommodation for testing requirements?

A He did not.

Q You testified that he didn't comply with management directive in the reprimand to be tested within seven days. Did he face progressive discipline for not complying with the seven days?

A He did.

Q And what discipline came next?

A A 10-day suspension.

Q So, I'd like to show you, in the initial Agency file, page 50, which is -- can you see that on the screen here?

A I can.

Q Do you know what that document is?

A Notice of Proposed Removal.

Q So, the specifications are on page 51. How many specifications are there?

A Two.

Q I'm sorry, this is the Proposed Removal; I apologize. Let me show you; that's not the document I intended to show you. My apologies.

A No worry.

Q Can you show me what this -- can you tell me what this document is?

A Notice of Proposed 10-day suspension.

Q Okay, and the specifications are on the next page here; how many specifications are there?

A Three.

Q And what is Specification No. 1?

A On the 24th of February, he failed to comply with the Agency COVID-19 testing program within seven days, calendar days, calendar-day timeframe specified in the Letter of Reprimand issued on the 17th of February.

Q So, was that for not complying within the seven days, as directed by the reprimand?

A Yes.

Q And what are Specifications 2 and 3 for?

A On March 1st, you failed to with the Agency COVID-19 testing program when you notified the supervisor you did not plan to come to work that week based on the testing requirement.

And then, Spec 3 was on the next week; on

March 7th, you failed to comply with the Agency COVID-19 testing program when you notified your supervisor you did not plan to come to work that week based on testing requirements.

Q So, I'd like to you page 42 of the initial Agency file, and this is the decision on the 10-day suspension. Was the 10-day suspension, ultimately, carried out?

A It was.

Q So, I'm going to show you page 43 here to try to establish a timeline. What are the effective dates of his suspension?

A From, effective dates of suspension is 18-July, 2022 through 27-July, 2022.

Q Now, what --

A Return date --

Q I'm sorry.

A Return date is July 28th.

Q Did he return to duty on Thursday, July 28th?

A He did not.

Q And why not?

A He, I, he requested leave for the 28th and the 29th. I think that's a Thursday and Friday; he requested leave.

Q So, because he attached a couple days of leave to his 10-day suspension, was he expected next to report for

duty Monday, August 1st?

A He was.

Q So, I'd to show you what's marked Agency Exhibit 4. Can you see that on the screen?

A Yes, barely.

Q Okay, let me zoom in here. Is that better?

A That's better.

ADMINISTRATIVE JUDGE LIDOW: And I apologize; let me interrupt for a second.

When you refer to Agency Exhibit whatever number it is, you're talking about the exhibits that were part of the Agency's pre-hearing submission?

MR. DAILEY: Yes, Your Honor, and it's my understanding that they have been admitted. I don't need to seek admission at this point?

ADMINISTRATIVE JUDGE LIDOW: Yes, that's right. I just wanted to clarify for the record for whomever is reviewing this transcript. That any time a reference is made to an exhibit, it's the Agency's pre-hearing submission. And then, you will notify us when you're looking at the Agency file.

MR. DAILEY: Yes, sir.

ADMINISTRATIVE JUDGE LIDOW: Okay, thank you.

MR. DAILEY: Yes, and up to this point I've been referring to it as the initial Agency file versus Agency

Exhibit.

ADMINISTRATIVE JUDGE LIDOW: Yes, perfect. Thanks.

MR. DAILEY: Great.

BY MR. DAILEY:

Q So, can you see that on the screen; it's two pages, right?

A Yes.

Q Can you tell me what this document is?

A It looks like an e-mail from Chris to me or me to Chris, somewhere around there. That one's from Chris; I can see the Chris to me part.

Q Okay, can you read Mr. Kroenung e-mail to you on August 1st?

A I understand that we are high on the Covid community level. I am requesting these annual sick leave or telework until the community level goes down to low.

Q And was this the first day you were expecting him to come back to the office after his 10-day suspension?

A And after that leave that he requested, yes.

Q And can you read your, the first couple sentences of your response to Mr. Kroenung?

A Good morning, Chris. After much consideration, I will grant you leave for this week, 8/1 through 8/5. That said, this is not sustainable as we continue to experience

mission degradation in your absence; therefore, this is the last unplanned leave that I will approve. I request that you arrive Monday --

Q Okay.

A -- morning, okay.

Q I'm sorry, you can stop. So, what is your understanding oft the Agency policy regarding planning and use of annual leave in advance?

A You must use or, to get annual leave, you should request it in advance.

Q So, I'd like to show you what is marked Agency Exhibit 8. Can you see that?

A I can.

Q And can you tell me what this document is?

A It's our annual policy, or it's our leave policy document.

Q In the first paragraph there, can you read that highlighted section beginning with except for emergency situations?

A Except for emergency situations, use of annual leave and, must be authorized in advance.

Q Was Mr. Kroenung requesting significant amounts of unplanned leave at this point?

A He was.

Q And what was his reason for taking that leave?

A So, that he didn't have to test for COVID-19.
Q When Mr. Kroenung needed unplanned or emergency sick leave, did you approve his leave requests?
A I did.
Q When he requested annual leave in advance, for whatever reason, did you approve his advanced leave requests?
A I did.
Q Did you allow any other employees under your supervision to use same-day annual leave requests to avoid complying with testing?
A I did not.
Q Did you allow any other employees under your supervision to telework in order to avoid testing requirements?
A I did not.
Q Did you have any other employees under your supervision that refused to comply with COVID-19 testing requirements?
A I did not.
Q Was Mr. Kroenung the only employee under your supervision that engaged in this conduct?
A He was.
Q So, what about outside your supervision? Were there other employees that refused to test?

A I've heard rumors of other people refusing to test, but I know people that have tested, too, to come into work, as well.
Q Do you have any knowledge of those people's personal circumstances, like reasonable accommodations or specific job duties that might allow for flexibility?
A None of those employees were under my supervision at the time.
Q So, I'd like to go back to the e-mail at Agency Exhibit 4. And can you continue reading your response? I think you left off at therefore, this is the last unplanned leave that I will approve.
A Okay, I request that you arrive Monday morning, the 8th of August, to begin your training. The COVID-19 testing is still required, and you are still on asking for COVID-19 according to NGA and DoD regulations. I expect you to furnish proof of negative COVID-19 test.
Q So --
A Please --
Q I'm sorry.
A I'm sorry, just says please call me if you need anything or you are confused by anything.
Q Thank you. So, based on your e-mail, what was your expectation for Mr. Kroenung when he returned to duty?
A I expected him to come into work on the 8th of

August and work.
Q And after you told him in that e-mail he was expected back on August 8th and must comply with testing, please look at how he responded to you at the top of page one here. Can you go ahead and read that first couple sentences?
A Thank you for approving my leave. My status on refusing to test has not changed, nor will it change.
Q How did you interpret that response from Mr. Kroenung?
A I believe that Chris would never test for COVID-19. And he said many times that he would never test for COVID-19, nor will it ever change in the future. I, I never believe it will.
Q So, now that you told him he was expected to return to duty on August 8th, do you request what the CDC community transmission level was for St. Louis on August 8th?
A I think it was medium or high.
Q Okay, so I'm going to show you what's marked Agency Exhibit 2. It's pretty small; can you see that on the screen?
A I, I can.
Q Can you tell me what this document is?
A It's a, either, it's either, we get an e-mail, and

it's also on our website, saying what the current masking and testing requirement was.
Q What was the date of this?
A August, the week of August 8th.
Q Can you tell me what's NCE, NCW, ARN?
A NCE is NGA campus east out in the D.C. area. NCW is in St. Louis, and ARN is the facility in Arnold, Missouri.
Q And where did Mr. Kroenung work?
A NCW here in St. Louis.
Q So, from the week of August 8th, what were the community transmission levels for NCW?
A They were high.
Q So, under the DoD policy, what did that mean for unvaccinated employees like Mr. Kroenung?
A If he wanted to come into work, it would require him to have a COVID-19 test.
Q He was expected to come into work on August 8th. The community transmission levels were high. What happened on August 8th?
A He sent me an e-mail saying he wasn't coming in.
Q Okay, so I'd like to show you what's marked Agency Exhibit 5. Can you see that on the screen?
A I can.
Q I'll zoom in a little bit there.

A I can see it.
Q Okay, please review that e-mail exchange at the very bottom and let me know when you've looked it over --
A Okay.
Q -- and can you tell me what this document is?
A On the 8th of August, he sent me an e-mail saying I'm writing to you today to let you know that I'm refusing to test for the Coronavirus.
Q And can you please read that first paragraph of your response?
A Good morning, Chris. Currently you, in your training status, I do not believe it is possible for telework to do in, I'm sorry; it is possible to telework to do that job. If you are sick, you may request last-minute sick leave.

In previous e-mail, I stated that the use of unscheduled annual leave was not sustainable as we've continued to experience mission degradation in your absence. I'm denying your request for unscheduled annual leave.
Q So, let's talk about his leave request first. Why did you deny him unplanned annual leave?
A I believe that he, we needed him at work to do his job and it was not scheduled ahead of time for this leave and I believe we needed him to do his job and come into work.

Q And you had issued him a warning up to that point that you would not approve unplanned annual leave?
A I told him in the last e-mail that I was not going to approve any unscheduled annual leave.
Q So, how about his request to telework? Why did you deny his request for telework that week?
A He, he was in training status at the time and I, and that training required him to be in the building to work on a higher network.
Q So, after facing the progressive discipline, and telling you he'd never comply, he refused to comply on this date, what was your opinion on whether he would ever comply with testing requirements?
A After telling me many times in e-mails, and telling other people that he would never comply with this testing, I never assumed he would ever comply with COVID-19 testing.
Q And based on that August 8th incident, alone, what disciplinary action did you think was necessary?
A I believed that the next disciplinary action was removal.
Q And what step did you take on August 8th in order to address Mr. Kroenung's conduct?
A I sent an e-mail to HD telling him that he didn't, refused to comply with COVID-19 testing, and that I

requested to move to further disciplinary, further disciplinary action.
Q And HD is?
A Human, Human Development; our HR.
Q Okay.
A Human Relations.
Q So, the following week was Monday, 15, August. Do you recall what the CDC community transmission level was for St. Louis on August 15th?
A It was either medium or high.
Q So, I'm going to show you Agency Exhibit No. 3. Can you tell me what that document is? Sorry.
A It is the e-mail on the website saying for August 15th that current masking and testing requirements for NCW were medium.
Q And under the DoD policy, what did that mean for unvaccinated employees like Mr. Kroenung?
A It means he needed to supply a COVID-19 test to come into work.
Q Okay, I'd like to show you what's marked Agency Exhibit 6. Can you see that on the screen?
A Yes, sir.
Q And can you tell me what this document is?
A It was his e-mail and my e-mail to him on August 15th.

Q Can you please read the first sentence of his e-mail to you on 15, August?
A Just writing to you today to let you know that I'm still not complying with testing.
Q And now I want to show you page 37, 38 of the initial Agency file. It's the proposed removal for Mr. Kroenung. Can you see that on the screen?
A I can.
Q And what are the two specifications in this proposed removal?
A Specification 1 is from August 8th. Specification 2 is from August 15th.
Q Are these the two incidents that we were just discussing on August 8th and August 15th?
A They are.
Q And did you provide input into the Douglas Factors in this case?
A I did.
Q So, I'm going to pull up the Douglas Factor analysis located at initial Agency file beginning page 24. Can you see that on the screen?
A I can.
Q I'm going to ask you some questions about some of the more relevant Douglas Factors in this case, starting with Douglas Factor No. 3 on page 25. Can you see that?

A I can.
Q Okay, go ahead and take a look at and review Douglas Factor No. 3 analysis, and let me know when you're through.
A Okay.
Q What role did the fact that he had previously received a Letter of Reprimand and a 10-day suspension for similar conduct play in determining whether to propose removal?
A I think they're huge. I mean, we, it's a progressive discipline, and he did not comply with either one of those. So, I think they are very important.
Q So, please take a look at Douglas Factor No. 5. Take a moment and review that analysis there, and let me know when you're through.
A Okay.
Q How did his refusal to comply with testing affect his ability to do his job?
A Well, he couldn't test, he couldn't come into work. He couldn't finish his training. He couldn't do the mission. Our mission was to, you know, provide military pilots, military pilots aviation stuff so they can fly their airplanes, and him not coming into work for that long a period of time affected our mission.
Q What effect did it have on his co-workers?

A Well, his co-workers, most of his co-workers, you know, they had to take, at first they had take his, all his countries. He had certain countries that he was in charge, and him not coming into work make me give those countries to other people so that I increased their workload because this mission has to be done. It's not a mission that can be put on hold for a person for nine months. He has to be done everyday, Monday through Friday and we have to put out products for military pilots. So, it's something that cannot be put on hold so long a period of time.
Q How did his refusal to comply with testing affect your confidence in his ability to do his job now and in the future?
A You know, when you're, when you refuse this policy, what else are you going to refuse? I mean, in the future, I, my confidence in him complying with anything; I didn't have a lot of confidence in him doing his job in the future.
What other, what other rules or, you know, policies was he going to not; if he didn't like something, was he just not going to do it? I didn't know at that point.
Q So, what affect did his decision not to follow Agency policy in this case have on your confidence that he would carry out, say, other mission-related Agency policies

if he happened to disagree with them?
A I didn't have any confidence that he would follow the policies of the government at any time, you know, that was my opinion.
Q So, how about Douglas Factor No. 10 on page 30? Can you please take a look at that, and let me know when you've had a chance to review it?
A Okay.
Q So, what effect did his repeated refusal to comply with testing have when determining his potential for rehabilitation?
A Well, I think over the last, over the nine months period, it showed that he wasn't going to comply with the testing. I don't know what other things he wasn't going to comply with in the future. I didn't have any confidence that he would comply with anything that he disagreed with.
Q So, let's look at Douglas Factor No. 12 on page 30 and 31. Can you please take a look at that, and let me know when you're through?
A Okay.
Q So, why did you think a lesser penalty than removal would not be sufficient in this case?
A Because every time, you know, with the Letter of Reprimand and the 10-day suspension and every week in between, he said he would never comply with this policy.

So, I did not think that he would. I believe him; I took him at his word and he said he wasn't going to do it and he repeatedly said he wasn't going to do it. So, I took him at his word that nothing would change his mind, no other penalty would change his mind.
Q And up to this point, what effect did the Letter of Reprimand have on his willingness to change his conduct?
A None.
Q What effect did his 10-day suspension have on his willingness to change his conduct?
A None.
Q Okay, I'm going to show you Agency Exhibit 4 again. Sorry. Can you see that?
A Yes.
Q This is an e-mail from Mr. Kroenung to you dated August 1st, just a week prior to the August 8 incident for which he was removed. Can you please read that highlighted sentence?
A My status to, my status on taking the test has not changed, nor will it change.
Q When an employee who's faced progressive still, unequivocally, states that he will not and has not changed, has not and will not change, what disciplinary action is necessary, in your opinion?
A I felt that removal was the only option.

Q And given the mission impact, history of progressive discipline, clear intent to never comply, is removal justified for any single, individual specification here?

A I agree. I believe so.

MR. DAILEY: Your Honor, excuse me for one moment here while I check my notes.

ADMINISTRATIVE JUDGE LIDOW: Sure.

MR. DAILEY: Your Honor, I don't think I have anything further for the witness.

ADMINISTRATIVE JUDGE LIDOW: Okay, great, thank you.

Mr. Lloyd, you can go ahead with your cross exam.

MR. LLOYD: Thank you, Your Honor. Would it be possible to take down the --

MR. DAILEY: My apologies; yes. When I can figure out how to do it.

ADMINISTRATIVE JUDGE LIDOW: There should be a red button that says stop screen share.

MR. DAILEY: Yes, for some reason, it's not -- I don't have the controls right now.

ADMINISTRATIVE JUDGE LIDOW: I'm going to go ahead and do it, okay?

MR. DAILEY: Thank you. I appreciate that.

ADMINISTRATIVE JUDGE LIDOW: Sure.

MR. LLOYD: Okay, thank you.

CROSS EXAMINATION

BY MR. LLOYD:

Q Mr. Nahlik, so I think if we could go back to the beginning of your testimony; we sort of jumped right into things. Could you describe your job responsibilities at NGA?

A I'm a Supervisor.

Q And as a Supervisor, what are you supervising?

A I supervise daily tasks. I supervise all aspects, for the most part, of the, any individual.

Q How many people do you supervise?

A Between 13 and 21.

Q And how long have you been in a supervisory role?

A Seven years.

Q And that's, just to clarify, that's seven years at NGA as a Supervisor; is that correct?

A Yes, sir.

Q Okay, thank you. You testified that you were aware of other individuals, other employees at NGA who had received an accommodation for testing; is that correct?

A I've heard of, I've had rumors of somebody getting a reasonable accommodation, yes.

Q Okay, and did you take any efforts to speak with

other supervisors about accommodations that they provided to their employees?

A I did not.

Q Okay, and during the testimony and as you were reviewing Mr. Kroenung's e-mails, and during your testimony we discussed, very briefly, Mr. Kroenung's reasons for why he objected to testing. Was that a factor in your decision to remove him; the reasons for his objection?

A No.

Q Also during your testimony, we reviewed NGA documents that required NGA employees who were unvaccinated to test before coming into work. Where did that authority come from for NGA?

A It came from a DoD policy.

Q And which DoD policy?

A I don't know the number offhand.

Q Now, where would we go to get the number for that policy?

A I'm sure you can go to NGA's HD or the DoD HD, or I'm sure you could Google it on the Pentagon's website, probably. I'm pretty sure Denny put it up there so he could give it to you.

Q Okay, did his removal documents reference the authority for the vaccine mandate, to your knowledge?

A Yeah --

MR. DAILEY: Your Honor, I just want to make a quick objection; and it's more of a point of clarification. We're talking about, we're not talking about the vaccine mandate, right?

We're talking about the testing requirements, which are two very distinct and different things. So, I just want to make sure we make that clear when we draw that line between the vaccine mandate and the testing policy.

ADMINISTRATIVE JUDGE LIDOW: Well, Mr. Lloyd, that's really for you to clarify. Which policy are you asking Mr. Nahlik about?

MR. LLOYD: Well, to clarify, the mandate we're referring to is the testing mandate. And if there's, if by habit of speech of some sort, we talk about mandate, it's going to tend to be the testing mandate. And I think that I probably have the presence of mind to let everybody know that I'm talking to the vaccine mandate if I'm talking about the vaccine mandate.

ADMINISTRATIVE JUDGE LIDOW: Okay, Mr. Dailey, is that fair enough?

MR. DAILEY: Yes, sir.

ADMINISTRATIVE JUDGE LIDOW: Okay, great.

Go ahead.

BY MR. LLOYD:

Q Okay, so in your interactions with Mr. Kroenung,

he proposed the use of his accrued annual and sick leave so that he would not have to come to work; is that correct?

A Yes.

Q Also, in your interactions with Mr. Kroenung and during your testimony, we noted an NGA document or request for the possibly of employees requesting reasonable accommodation to testing; is that correct?

A Yes.

Q Okay, did you view Mr. Kroenung's proposal of the use of his leave, did you view that as an accommodation request?

A I did not see that as an accommodation request, no. I saw it as him requesting leave.

Q And why didn't you see it as an accommodation request?

A I didn't see it as a formal accommodation, reasonable accommodation request through the reasonable accommodation office because it would go through the Reasonable Accommodation Office and then come to me for a reasonable accommodation.

I saw, so I didn't see that as a reasonable accommodation because it goes, all RAs that I've approved before had gone through the Reasonable Accommodation Office.

Q Is it fair, okay, could you describe the -- well, is it fair to say that it didn't look like a reasonable

accommodation request to you because it didn't come from the specific office?

A Yes, I would say that. I had also told him many times to, if he wanted to put the reasonable accommodation in, to contact the Reasonable Accommodation Office. And it was in every document that we gave him and every phone number and e-mail given to him to request a reasonable accommodation.

Q Are you aware of the policy that requires reasonable accommodations to come through the Reasonable Accommodation Office?

A I don't know all the policies, no. I don't know all the policies, no.

Q Okay, as part of Mr. Kroenung's discussions with you via e-mail, he raised the prospect of telework. Was telework a possibility for Mr. Kroenung's work responsibilities?

A Well, when he was in training, no, telework was not available because the training was in a higher network. So, he had, that required him to be in the building.

Q Well, speaking of the training first, had the training, had that specific training ever been performed by telework in the past, especially during the height of Covid?

A I don't know. I assume not because when I talked to the training person, they required him to be in the

building.

Q Could you describe the purpose of the training for Mr. Kroenung?

A Your training was in, when Mr. Kroenung came into the office during a low period, he requested to, to my boss; I wasn't there that day. He requested my boss to move to another area, so my boss accommodated it. And so that new area needed to train him.

Q So, which area was he in and which area was he going to?

A He was in procedure design with my area. And then he went to, I'm not 100 percent sure the area; we call it FID. I'm not 100 percent sure what he was going to be doing in his own transit.

Q Is FID an acronym?

A Yes.

Q Do you know what it stands for?

A It's, I don't know what it stands for, but it would be like an Area Analyst.

Q Okay, so as he moved to the new area, to FID, what was the purpose of his training?

A To get trained up on his new area.

Q Do you know whether Mr. Kroenung had worked in FID in the past?

A He did. Oh, and he, I know he worked as an Area

Analyst in the past, yes.

Q Okay, and so if he had already worked in there in the past, why did he need training?

A It was at least five or six years since he was in that area, and he needed to be trained up on current processes.

Q What would have changed in the five or six years since he had last been there?

A Lots of stuff. I can't tell you, specifically, but I'm not in that area, but I know that they're required to train him to be in that area.

Q Okay, do you know who was requiring the training?

A The area? Is that was you're asking?

Q Well, who in the, who was requiring him to train over at FID?

A The Branch Chief and the Branch that he was going into.

Q And who was the Branch Chief at FID?

A Gavin, Greg Gavin.

Q Greg, G-r-e-g, Gavin, G-a-v-i-n?

A Uh-huh, I think so.

Q Were you in communication with Greg Gavin?

A A little bit, uh-huh.

Q Were you in communication with Greg Gavin about Mr. Kroenung and his training?

A Yeah.
Q Okay, do you know, from that communication, did you have a sense of when Mr. Kroenung would finish the training?
A You know, he started it. I think he was doing it for two or three, four weeks, and then Covid levels went up. So, I think that training takes six months or longer to do; I can't tell you exactly. I think it's individual person-related, but I know he did it for about, about a month or so, and so he still needed more time.
Q So, you mentioned that's it's by person. Would somebody with a higher familiarity than another person coming in green, would they be, do you think that it would be possible to complete the training quicker?
A I don't know their timelines.
Q Well, have you seen anybody over at FID complete their training in less than six months?
A I don't know. I am not in FID. I'm not, I couldn't tell you.
Q So, I think we covered whether you know how much longer he had. Did you have a sense, from your communications with FID, that Mr. Kroenung was close to the end of his training?
A I do not think so.
Q And I see this as a different question, but do you

have a sense of how much longer it would go from --
A I do not. I do not have a sense, no.
Q Thank you. So, Mr. Kroenung's suspension and removal documents state, and also your testimony referenced the mission. Could you describe how Mr. Kroenung's absence affected the mission?
A Well, when he first started, I had to, everyday my employees have to check for source and NOTAMS. So we, they get specific country information, and they have to process that information to make changes to instrument procedures for pilots to fly.
So, every day they had to check source, NOTAMS, and then if something changed, they had to write a tasking. And then they have to coordinate that through the QC process, and it has to go through other areas in the area.
Q Okay, so that sounds like a description of what he would do, I guess, in the normal course of business, but how did, how did his absence affect what you just described?
A It required other people to do his work for him.
Q Wouldn't those people have to cover for him while he's in training, anyway?
A Well, when he went into training, we moved all of his countries to other people. So yes, they were, they were doing that, but when he was in training, at that point he

was in training for another area. So, I couldn't tell you what he was, what other people had to do for him.
I know that they require a certain amount of people and if they don't have enough people, they can't do the job that they want to do.
Q But, okay, I'm confused. So, your testimony said that he would be in training for about six months, but your testimony --
A I don't know how long his training would be, sir. I said six months or longer, I'm guessing. I, that is a straight-up guess.
Q It's a straight-up, okay. So, you're not sure how long the training would go?
A I'm not in that area. I'm not, I was an area analyst 13 years ago, whatever, 12 years ago. Different training back then, different area, as well.
Q How were you able to speak to the mission degradation at FID if you weren't over that area?
A I think that they require a certain amount of people to do their job and if they don't have enough people to do their job, something is not getting done. So, for them to, I know that there are areas that I can't, how do I explain this?
They don't have enough people to do what they want to do right now. I know this for a fact and that

degrades how many airports they can handle. I've been denied putting in certain airports because people don't have enough, they don't have enough people in that, those areas.
So, I know that if they don't have enough people, their mission is degraded and he is a billet in that area required to do their work.
Q It sounds like you're describing an immediate need. Why would they accept a trainee, in the first place, if he can't work?
A Why does anybody accept a trainee?
Q Well, I, the question is for you, sir. And the question is why, if they needed somebody immediately in order to accomplish the mission and avoid mission degradation, why would they accept a trainee who can't do the job, in the first place?
A I think every job has on-the-job training and their job requires people to learn their current processes and that's what I believe.
Q Okay, was it possible to perform Mr. Kroenung's duties at FID by telework during the height of the pandemic?
A I don't know exactly what they did.
Q If you don't know what they did, how do you know that telework was not available at FID?
A Because Greg Gavin told me that he required him to be in the office to do his training.

Q How did he tell you that?
A Verbally.
Q Did Mr. Gavin recommend Mr. Kroenung's removal?
A I never asked him about that.
Q Are you aware of any other disciplinary actions against Mr. Kroenung?
A Not under my, let's see; I know I wrote an MFR once of him. He was watching Facebook too much on his computer at work. I know that I've discussions with him when he go in an argument with somebody one time pretty badly and blew up on them in the workplace. So, I know I had a discussion with him to not do that anymore, but formal disciplinary action, I don't know of. Not, not under me.
Q Okay, could you clarify for us what an MFR stands for?
A Memorandum For Record.
Q Okay, and that would, would that go in his personnel file?
A I kept that. It was an MFR between me and him. I think I, I sent it to him, probably.
Q Okay, is an MFR a formal disciplinary proceeding?
A It is not.
Q As the, and forgive me, I think we need to go back a little bit. How long were you supervisor over Mr. Kroenung?

A I think July of, July of '18 until his removal. June or July of '18 to his removal; somewhere in there.
Q Were you present as the supervisor during that entire interval? Was there any break for you?
A Yes. I was on a JDA, Joint Duty Assignment, from around July or August of '20 to July or August of 2021. They had an Acting Branch Chief during that time.
Q Okay, and are you aware of any disciplinary actions against Mr. Kroenung by that Acting Branch Chief?
A I don't think any formal. I know that, during that time, he refused to wear his mask one time in the hallway, and he got in trouble for that. But I don't know if it, I don't think it was a formal, a formal, but it was definitely informal, between him and the supervisor, I think.
Q As a Supervisor, have you been involved in the removal of any of your other employees?
A I have.
Q Okay, how many would you say?
A I have one other employee that was in the process of being removed before he passed away.
Q Now, did other disciplinary actions precede his proposed removal in that case?
A The other person, yes.
Q Do you recall how many?

A I think he had a Letter of Reprimand, a 10-day suspension, and then removal, I think, and that's my recollection.
Q So, throughout our testimony, or your testimony here we've discussed the possibility of reasonable accommodation, and that was for the testing requirement. And also, you've also discussed, tangentially, the reasonable accommodations for the vaccine requirement. Are you aware of reasonable accommodation for other work duties that Mr. Kroenung would have to perform?
A What do you mean by that, sir?
Q Well, just to give an example; I'm not too into the details of his job responsibilities, but you described it as making or compiling maps. And so, would it be possible for him to get an accommodation for making maps?
A I do not believe so.
MR. LLOYD: I don't have any further questions, Your Honor. Thank you.
ADMINISTRATIVE JUDGE LIDOW: Okay, thank you.
Mr. Dailey, anything on redirect?
MR. DAILEY: Yes, Your Honor.
ADMINISTRATIVE JUDGE LIDOW: All right.

REDIRECT EXAMINATION

BY MR. DAILEY:
Q So, a lot was made of the reasonable accommodation

process, and we talked about the Agency leave policy. Do you recall what the telework policy was at the time?
A The telework policy at the time; what do you mean by that?
Q How many, like was telework allowed? How many days a week?
A Telework was allowed in my Branch, but they would have to, at the time when it first, this all first happened, my people had to telework one day and then they had to come back in the next day, because they had to e-mail to themselves, and then they had to move it up to the next network. And then do the rest of the work at the time.
Q So, do you recall how many days of telework was consistent with the telework policy at the time?
A I think at the time, I want to say the AGA policy was 64 hours, but SFAG, where I work, at a maximum, I think it was 40 hours.
Q So, I'm sorry, 40 hours --
A A pay period.
Q -- bi-weekly?
A Yeah, a pay period, uh-huh. Every two weeks.
Q Okay, and to deviate from the Agency leave and telework policy, are employees expected to request a medical or religious accommodation?
A That's my understand, yes.

Q And what was Mr. Kroenung's reason for refusing to test?
A He thought it was illegal.
Q Did he object to testing on the basis of his religion?
A Not that I know of.
Q Did he object to testing on the basis of an underlying medical condition?
A For testing, no, not that I know of.
Q Is there an accommodation process to address philosophical or subjective agreements?
A No.
Q Or disagreements?
A Not that I know of, no.
Q And then counsel asked you why the other department would accept him for training if he couldn't do the job, or they knew he couldn't do the job. Was the expectation that he would come in and comply with testing and do the job?
A Yeah, they wanted him to come in and do the job, yes.
Q And this is finally the last question; during the entire period here, any time at all, did he ever mention to you that he would like a medical or religious reasonable accommodation?

A Not for testing, no.
MR. DAILEY: Okay, I don't have anything further, Your Honor.
ADMINISTRATIVE JUDGE LIDOW: Okay, Mr. Lloyd, anything further?
MR. LLOYD: Yes, Your Honor, probably just a couple questions.

RECROSS EXAMINATION

BY MR. LLOYD:
Q So, we discussed, as he went over to the other area, that he was to do the job. Are you aware whether that job was eligible for telework?
A I know, I don't think there, I couldn't tell you 100 percent, but I think they were allowed to do some telework, but I, I don't think it was as much as my area was doing.
MR. LLOYD: Okay, I have no further questions.
ADMINISTRATIVE JUDGE LIDOW: Okay, thank you.
Mr. Nahlik, you are excused. Before you leave, I'll just caution you not to discuss the substance of your testimony with anyone until you've been told it's okay to do so, all right?
THE WITNESS: Sounds good, sir.
ADMINISTRATIVE JUDGE LIDOW: Okay, thank you very much. You can disconnect now.

Stuart, why don't we go off the record for a moment? Thank you.
COURT REPORTER: We are off the record.
(Off the record.)
COURT REPORTER: We are on the record.
ADMINISTRATIVE JUDGE LIDOW: Okay, so we're back after a short break.
Mr. Dailey, is the Agency ready to call its next witness?
MR. DAILEY: We are, Your Honor.
ADMINISTRATIVE JUDGE LIDOW: Who would that be?
MR. DAILEY: The Agency calls Jo-Ellen Adkins.
ADMINISTRATIVE JUDGE LIDOW: Okay, and I've admitted Ms. Adkins into the hearing space.
Good morning, Ms. Adkins, how are you?
MS. ADKINS: Good morning. I'm doing great, thank you.
ADMINISTRATIVE JUDGE LIDOW: Great. Can I as you to raise your right hand?
MS. ADKINS: Yes.
(Witness sworn.)
Whereupon,
JO-ELLEN ADKINS,
called as a witness herein, having been first duly sworn, was examined and testified as follows:

ADMINISTRATIVE JUDGE LIDOW: And could I ask you to state and spell your full name for the record, please?
THE WITNESS: Yes, my name is Jo-Ellen Adkins. And that's spelled J-o, hyphen, E-l-l-e-n. Last name is A-d, as in David-k-i-n-s.
ADMINISTRATIVE JUDGE LIDO: Okay, great, thank you very much.
Mr. Daily, whenever you're ready.
MR. DAILEY: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. DAILEY:
Q Ms. Adkins, what was your position in August, 2022?
A I was the Deputy Director of the Human Development Directorate at the National Geospatial-Intelligence Agency.
Q And, in your position as the Deputy Director of Human Development, do you serve as the Chair of the Personnel Evaluation Board or PEB?
A I do.
Q And why does the Agency use the PEB, or let me ask you what is the PEB process, briefly?
A So, the PEB process is a process that we have at NGA where those individuals who are considered to have continued with their sort of progressive discipline and have continued to not abide by that other discipline that we've

had and they may have received in the past, it comes to a Board to determine what kind of disciplinary measures that we would take.

Q So, the Board decides what should be proposed?

A That's correct, and it goes up to a Deciding Official. So, the Board makes the proposal, and I make the proposal. It's, I take the input from the board. And then it goes up to the Deciding Official.

And it's the Deciding Official's determination, based on the weight of the evidence, what that discipline may or may not be.

Q And why does the Agency use the PEB process?

A We use it, primarily, to ensure that we have as much consistency as we possibly can when it comes to discipline. What you don't want to have happen is one individual being, you know, having some kind of discipline against them that is completely inconsistent with others across the board. So, we try and ensure that there's some type of consistency within the Agency.

Q And as the Chairperson, are you the Proposing Official?

A I am.

Q And were you the Proposing Official for Mr. Kroenung's removal?

A I was.

Q So, I'm going to show you, located in initial Agency file, page 37, the proposal to remove. Can you see that on the screen?

A Yes, I can.

Q And can you tell me what this document is?

A Yes, it appears to be the Notice of Proposed Removal.

Q And look on page 38; what was Mr. Kroenung charge with?

A So, he was charged with conduct unbecoming a Federal employee.

Q And is Specification No. 1?

A It says that on or about the 8th of August of 2022, when the CDC community level at NCW was high in St. Louis, he failed to comply with the Agency's COVID-19 testing program when it was notified that his supervisor, that he was refusing to test.

Q And what is Specification No. 2?

A It says that on or about 15, August, 2022 when the CDC community level at NCW was medium, you failed to comply with the Agency's COVID-19 testing program when you notified your supervisor that you were refusing to test.

Q As the Proposing Official in the case, did you go through the Douglas Factors?

A I did.

Q And did Mr. Kroenung's Supervisor, Mr. Nahlik, provide input on the Douglas Factors?

A Yes.

Q So, I'm going to pull up the Douglas Factor analysis located in the initial Agency file beginning on Page 24. Can you see that on the screen?

A I can, yes.

Q I'm going to go through some of the more relevant Douglas Factors and ask you about your analysis, and we're going to start with Douglas Factor No. 3 on page 25. Can you see that?

A I can, yeah.

Q Can you take a moment to review your analysis there, and let me know when you're through.

A I'm through with reading it.

Q So, what role did the fact that he had previously, that he had previously received a Letter of Reprimand and a 10-day suspension play in determining whether to propose removal in this case?

A Well, it had a significant consideration for, for me, definitely because typically we do have that Letter of Reprimand and the suspension following. It indicates that the progressive discipline has been violated.

And so, if the, if the behavior has not been corrected with something previously, then that certainly is

an aggravating factor in the, in the determination.

Q Okay, so how about Douglas Factor No. 5? Can you please take a look and review your analysis there and let me know when you're through.

A Okay. Okay, I have read it.

Q How did his refusal to comply with testing affect his ability to do his job?

A In the discussions at the Board, it was indicated that they needed him, you know, for a mission-essential requirement for that particular organization and that position that he held. So, this did, also, play an aggravating factor in that because he wasn't able to be there and perform his job because he chose not to test, then that did have a significant impact on his mission.

And the fact that in his organization other people had to do his job for him, in addition to their own job. So, it was a significant factor.

Q All right, how about Douglas Factor No. 10? Please take a moment and review that analysis, and let me know when you're through.

A Okay, I'm finished reading it.

Q And what effect did his repeated refusal to comply with testing have on determining the potential for rehabilitation?

A It appeared that Mr. Kroenung continued to deny

and not wanting to test, and because he refused to test, then that had a considerable impact on his management and their trust and faith in him that he could do the job. So, that was certainly another aggravating factor taken into consideration.

Q And then, finally, let's look at Douglas Factor No. 12. Take a look at that analysis, and let me know when you're through, please.

A Okay, I'm through reading it.

Q Why did you think a lesser penalty than removal would not be sufficient in this case?

A Because the other things that were levied against him had no impact on his behavior, and because of that, there was no indication and no indication from him, as well, that he would change that behavior.

Q So, I'm going to show you what's marked Agency Exhibit 4. Can you see that on the screen there?

A I do.

Q This is an e-mail from Mr. Kroenung to his supervisor dated August 1st, just a week prior to the incident on August 8th. Can you please read that highlighted sentence?

A Yes, it states my status on refusing to test has not changed, nor will it change.

Q When an employee's already faced progressive

discipline still states he has not and will not change, what disciplinary action is necessary?

A It leaves you little choice in that situation because the employee is refusing to change their behavior. And because of that, it leaves you with an option of, of termination at that point.

Q Considering all the factors, the mission impact, progressive discipline and his intent to never comply, in your opinion, is removal justified for any single, individual specification here?

A In combination with all of the various factors, and the precedent he set by not changing his behavior, then it led me to no other decision than to propose termination.

MR. DAILEY: All right, Your Honor, excuse me for a moment while I look at my notes, please.

ADMINISTRATIVE JUDGE LIDOW: Sure, go ahead.

MR. DAILEY: All right, Your Honor, I don't have any further questions at this time.

ADMINISTRATIVE JUDGE LIDOW: Okay, Mr. Lloyd, I think we can turn things over to you to cross exam.

MR. LLOYD: Thank you, Your Honor.

ADMINISTRATIVE JUDGE LIDOW: Okay, I'm going to go ahead and stop this screen share.

MR. DAILEY: Thank you, Your Honor.

ADMINISTRATIVE JUDGE LIDOW: Yes.

Okay, whenever you're ready.

CROSS EXAMINATION

BY MR. LLOYD:

Q Thank you, Ms. Adkins, for being here. I just wanted to; well, perhaps it's best for the benefit of everybody for you to describe in a little bit more detail how your position related to Mr. Kroenung's.

Did you have any interaction with him, apart from the disciplinary proceedings against him?

A No, I had never met him.

Q Okay, and your position on the Personnel Evaluation Board, is that something like a committee that you sit on and you have other job responsibilities, or is that your main job responsibility?

A So it's, it's definitely not my main responsibility. It's just one of many functions that I perform. And, yes, it's the, it is a committee that is comprised. So, you know, the supervisor. And then we have other senior executives within his chain-of-command, and then some outside his chain-of-command that sit on that committee.

Q Okay, and so, to clarify then, the Committee or the Board would be different, depending on the employee being reprimanded?

A Well, you would have the supervisor. So every,

every individual who is being discussed, you have to have their supervisor. And then, also, the component director or the deputy director. So, that's always going to be different depending on which component the employee is reporting to; their chain-of-command.

Q Okay, if I could just make a note here for a moment. Now, so in your day-to-day activities and job responsibilities, would you have visibility into the, into the accommodations that employees, other than Mr. Kroenung, received in their day-to-day employment?

A The only insight I have to it is if there is a, a PEB case that comes to my attention. We have the Director of our Office of Diversity, Equity and Inclusion and Accessibility who sits on the PEB, as well.

And she will indicate if there is any sort of RA for a particular employee for a particular purpose, and that sometimes is involved in a, you know, in any kind of decision that might come about.

Q And so, just to clarify then, my understanding of your testimony is that you weren't involved in administering or approving any accommodations for testing or other requirements?

A No.

Q Okay, you would see it if it became a discipline problem; is that correct?

A Yes, that's correct.
Q Okay, thank you. And how long have you served on various PEBs? How long has this been part of your job responsibilities?
A It started when I became the Deputy Director of the Human Development Directorate in 2021 of September.
Q And before that, were you employed at NGA with different responsibilities?
A Yes, I was.
Q Okay, and when did you start at NGA?
A I started in 2003.
Q So, in that time, from 2003 up to the point where you sat on this Mr. Kroenung's, on his PEB, do you recall another time when employees at NGA were required to test for a disease before arriving at work?
A I can't recall that. The only thing I know is the situation of COVID-19. I'm not aware of any other time people had to test before coming into a building.
Q So, you described your role in Mr. Kroenung's PEB process as being the Proposing Official. Could you describe what that means?
A Oh sure. So, it means, having listened to the comments from the Board, the individuals who are on the board, and listening to their votes, because at the end they vote, I take that inconsideration.

But that's not the only thing I that I take into consideration. I always look at the weight of the evidence, as well. So, I take every document that's given to me and I, you know, carefully look at each document. And then I make a determination based on the weight of the evidence, but it's just the proposal that goes forward. So, that's how I, how I make my proposal.
Q And so, you mentioned consultation with others. Did you, as part of that consultation, did you speak with Mr. Kroenung?
A No, I did not. The way it works, just so that everybody's aware, is that I do not, I don't do that. That's something that the Deciding Official is able to. That's where Mr. Kroenung, or whoever is, you know, facing the situation. That's where they are allowed, then, to talk to the Deciding Official. So, it doesn't happen until it gets to the deciding level.
Q Okay, could you describe the difference between the Proposing and the Deciding Official?
A Well, the Proposing Official just proposes the discipline. And then, the Deciding Official decides, make the determination based on her, you know, reading of the information and talking to the individual. Then she makes that determination after considering all of those factors.
Q And who was the Deciding Official for Mr.

Kroenung?
A The Deciding Official at that time was Vietta Williams.
Q Okay, and as part of the PEB process, did you speak to Mr. Nahlik, Justin Nahlik? I don't know if I'm saying it --
A Was that the Supervisor?
Q Yes.
A Not before the PEB. So, during the PEB, the supervisor provides their information during the Board process.
Q And did Mr. Nahlik participate in the Board process?
A I can't say whether he did or didn't. I believe he did, but I, I don't have that information in front to me to know.
Q And so, you don't, I don't want to put words in your mouth, but you just don't recall having an interaction, or you don't recall the Board, or --
A I, I recall the, I recall the Board, but I, I can't recall whether I had, whether he was at, at the Board. I believe he was, but I can't confirm that because, like I said, I don't have the minutes. I don't have anything in front of me to verify that one way or another.
Q Okay, and just to clarify, I think for everybody's

benefits. When you're describing the Board, you're just, are you describing people actually sitting in a room together and discussing? Or is this something that can happen sort of convening a Board, but you're doing it by e-mail and by exchanging documents?
A No, we don't exchange documents. We do it by; it's a, we had a telecom at the time because there were individuals who were not at, in the D.C. area. So, we had a telecom and had that conversation that way.
Q And do you recall whether Greg Gavin was part of the Board?
A I don't recall.
Q Do you recall, affirmatively, who was, who did participate in the Board?
A I don't have all the names, but I do know that it is the Deputy Director of the Security and Installation Directorate and the Deputy Director of the Analysis Directorate, Steven Martin.
And there was a representative from the Office of Diversity, Inclusion, Equity and Accessibility. I don't know who that, I can't remember the name of that person. I don't have that information, and I believe the career service representative is typically on the Boards, as well.
Q Do you recall, was Mr. Kroenung in training when

you recommended his removal?
A I don't know what, I don't know if he was in training or not.
Q So, how did you form your conviction that he was unable to perform his job duties?
A So, it's based on the Douglas Factors and it's based on the conversation during the Board, and based on information that; you look at, you look at the information holistically. And the fact that he was refusing to test and refusing to, to perform his function and his mission for the Agency.
Q Was testing for Covid part of his job description?
A It's not part of the job description, but it was part of a Department of Defense requirement from the Secretary of Defense that all individuals be vaccinated. And if they're not vaccinated, then they needed to test before coming into the building.
Q Do you recall the citation to that requirement? I mean, what is that requirement? Was it a regulation or a letter?
A Yes, I mean, they were certainly, they absolutely were Department of Defense directives that came out to the workforce to enforce compliance. I don't have them in front of me, but they're not hard to get. There's a whole website on it.

Q Okay, well, with respect to Mr. Kroenung, specifically, would his removal papers or your proposal, proposed removal, would it reference the specific directive?
A I would have to look at what was issued by the Deciding Official because the Proposing Official, I don't believe that was in that. It may have been in the documentation, but I don't know. I don't, like I said, I don't have that in front of me.
Q Did he --
A It was more of the fact that it was the, based on what I can remember, it was more of the fact that it, it was a requirement for health purposes. And that he was continuing to refuse to comply by the requirement, and then stated that he wouldn't comply, regardless. So, it was, it was based on that.
Q Well, just to clarify, did he say he would not comply or that he would not test?
A It's the same thing.
Q Well, would somebody who is approved for telework, for example, were they asked to test?
A If they were approved for telework, no. If they were not coming into the building, they did not have to test.
Q Okay, so the possibility existed for some people to work without testing, if they weren't coming into the

building; is that correct?
A That's correct. It depended on the mission and the nature of the job that they were performing.
Q So, if Mr. Kroenung was approved for telework, and not testing, would be there be any violation?
A No.
Q Are you aware of any employees who received an accommodation to the testing requirement?
A Yes.
Q Okay, and were they permitted to come into the building?
A Typically, if they had an accommodation, they did not come into the building.
Q Okay, are you aware of any circumstances where somebody who was, who did not have to test because of an accommodation was allowed into the building?
A I mean, from my knowledge, no.
Q Now, were you involved in PEBs for any other employees who did not comply with the testing requirement?
A To my knowledge, no.
MR. LLOYD: I have no further questions, Your Honor.
ADMINISTRATIVE JUDGE LIDOW: Okay, thank you.
Mr. Dailey, anything further?
MR. DAILEY: Yes, excuse me. Yes, just one

question, please.
ADMINISTRATIVE JUDGE LIDOW: Okay.

REDIRECT EXAMINATION

BY MR. DAILEY:
Q So, Ms. Adkins, you mentioned having an ODE Rep, an Office of Disability on the Board to mention any religious or medical accommodations. Do you recall whether there was any religious or medical accommodation made in this case?
A There was not.
MR. DAILEY: I don't have anything further, Your Honor, thank you.
ADMINISTRATIVE JUDGE LIDOW: Okay, Mr. Lloyd, anything further?

RECROSS EXAMINATION

BY MR. LLOYD:
Q As part of the Board process, were you made aware of Mr. Kroenung's request for leave and telework in lieu of coming in?
A I knew that the supervisor and the mission required him to come in, and I'm unaware of any leave requests or requests for telework.
MR. LLOYD: Okay, no further questions.
ADMINISTRATIVE JUDGE LIDOW: Mr. Dailey, anything on that specific note?

MR. DAILEY: No, Your Honor.
ADMINISTRATIVE JUDGE LIDOW: All right, well, Mrs. Adkins, thank you again for appearing today. You can go ahead and disconnect, but I'll caution you before you do not to discuss your testimony with anyone until you've been told otherwise, okay?
THE WITNESS: Yes, sir.
ADMINISTRATIVE JUDGE LIDOW: Okay, thank you, again.
THE WITNESS: Thank you.
ADMINISTRATIVE JUDGE LIDOW: Take care.
THE WITNESS: Bye.
ADMINISTRATIVE JUDGE LIDOW: Stuart, we can go off the record.
COURT REPORTER: We are of the record.
(Off the record.)
COURT REPORTER: We are on the record.
ADMINISTRATIVE JUDGE LIDOW: All right, after a short break, Mr. Dailey, is the Agency ready to call its next witness?
MR. DAILEY: We are, Your Honor.
ADMINISTRATIVE JUDGE LIDOW: Who would that be?
MR. DAILEY: Vietta Williams.
ADMINISTRATIVE JUDGE LIDOW: Okay, and I've admitted Ms. Williams into the hearing space.

Good morning. Can I ask you to raise your right hand, please?
(Witness sworn.)
Whereupon,
VIETTA SHIRL WILLIAMS,
called as a witness herein, having been first duly sworn, was examined and testified as follows:
ADMINISTRATIVE JUDGE LIDOW: And could you state and spell your full name for the record, please?
THE WITNESS: Vietta Shirl Williams. V-i-e-t-t-a, Shirl, S, as in Sam-h-i-r-l. Williams, W-i-l-l-i-a-m-s.
ADMINISTRATIVE JUDGE LIDO: Thank you very much.
Mr. Daily, whenever you're ready.
MR. DAILEY: Thank you.
DIRECT EXAMINATION
BY MR. DAILEY:
Q Good morning, Ms. Williams.
A Good morning.
Q What was your position back in August, 2022?
A I was Director of Human Development Directorate at the National Geospatial-Intelligence Agency.
Q And in your position as a Director of Human Development, what is your role in disciplinary actions proposed by the PEB Chair?
A I'm the Deciding Official.

Q As the Deciding Official, do you determine whether or not to sustain the charges in the proposal?
A Yes, I do.
Q And do you determine whether or not the proposed penalty is reasonable?
A Yes, I do.
Q Were you the Deciding Official in Mr. Kroenung's proposed removal?
A Yes, I was.
Q And in Mr. Kroenung's case, did you determine that the charges should be sustained?
A Yes, I did.
Q So, I'd like to show you the document containing Mr. Kroenung's response on page, oh, I'm sorry. Did Mr. Kroenung provide a response to his proposed removal?
A Yes, he did.
Q I skipped over that part. I'd like to show you the document containing his proposed response in the initial Agency file on page 33.
Can you see that on the screen?
A Yes, I can.
Q In his response, did he deny refusing to comply with testing requirements?
A No, he, yes, he did not. I'm, I'm sorry, repeat the question.

Q Sure. Did he deny refusing to comply with testing requirements?
A He did not deny refusing testing requirements, no.
Q And based on his response, was there any question as to whether or not he committed the conduct for which he was charged?
A No, there was no question.
Q And once you determined that the charges should be sustained, did you conduct a Douglas Factor analysis in this case?
A Yes, I did.
Q So, I'd like to show you the Douglas Factor analysis located on page 23 of the initial Agency file, and we're going to walk through some of the more relevant Douglas Factors, starting with Douglas Factor No. 3.
Can you see that on the screen?
A I can, yes.
Q Now, is your analysis in the box labeled Deciding Official analysis?
A It is.
Q Okay, so can you please take a moment and review both the Proposing Official and your analysis there, and let me know when you're through, please?
A Okay.
Q What role did the fact that he had already

received a Letter of Reprimand and a 10-day suspension for similar conduct play in your determination that removal was appropriate?

A Well, I concluded that, based on the proposing analysis and the two prior offenses and penalties that had been rendered, and I proposed that the next step was appropriate in terms of the decision.

Q So, how about Douglas Factor No. 5 on page 27 and 28? Can you look at that analysis, and let me know when you're through, please?

A On Douglas Factor No. 5, sir?

Q Yes, right here at the top of the page.

A Okay, thank you.

Q Right there.

A Thank you. Okay.

Q And how did refusal to comply with testing affect his ability to do his job?

A Mr. Kroenung was not able to enter into the premises because of the policy that was in place. He could not provide a test, a test result. That was the policy in place at the time. And so, he was unable to enter the building and the premises, thus being unable to do his job.

Q And how did his refusal to comply with testing requirements affect his supervisor's confidence in his ability to do his job?

A As the Supervisor, as the Proposing Official expresses, it was a failure to follow and comply with procedures that affected his confidence and trust to do the job.

Q So, what effect did his decision not to follow Agency policy in this case have on your confidence that he would carry out other, say, mission-related Agency policies if he happened to disagree with them?

A I concluded, based on the pattern therein, that was through the analysis, the Douglas Factor analysis, that, I determined that I had, my confidence in terms of moving forward was also impacted in terms of him being able to do his job.

Q And let's look at Douglas Factor No. 10. Can you please take a moment to review the analysis there, and let me know when you're through, please?

A Okay.

Q Now, what effect did his repeated refusal to comply have, in your determination, of his potential for rehabilitation?

A A pattern had been set via to prior disciplinary actions for the same charge. And so, based on this proposal coming forward for the same circumstance, I concluded that, that rehabilitation was probably not going to be a result.

Q And then, finally, let's look at Douglas Factor

No. 12 on page 30 and 31. Please take a moment and look at that analysis, and let me know when you're through, please.

A If you could move --

Q Oh, I apologize. Thank you.

A Thank you. Thank you. Okay.

Q So, why did you think a lesser penalty than removal would not be sufficient in this case?

A In looking at all of the relevant information, as well as Mr. Kroenung's written reply, and also stating that he will refuse to comply with the policy that was in place and the two prior disciplinary actions, I felt that this was the appropriate penalty to be rendered.

It did not appear that there would be any change in the future relative to complying with policy.

Q Okay, and now I'm going to show you Agency Exhibit 4. Can you see that on the screen?

A I can.

Q This is an e-mail from Mr. Kroenung dated August 1st, just a week prior to this August 8th incident for which he was removed. Can you read that highlighted sentence, please?

A My status on refusing to test has not changed, nor will it change.

Q So, when after facing progressive discipline, he continues to proclaim that he has not and will not change,

what disciplinary action is necessary, in your opinion?

A The one that was rendered, sir. And in this case it was the third disciplinary action based on the progressive discipline policy that we have. It's removal.

Q And given the mission impact, the history of progressive discipline and his intent to never comply, was removal justified for any one of the individual specifications alone here?

A I believe it was, but we took the progressive approach.

MR. DAILEY: Okay, I don't have any further questions, Your Honor. Can you stop sharing for me, please?

ADMINISTRATIVE JUDGE LIDOW: Okay, sure.

MR. DAILEY: Thank you.

ADMINISTRATIVE JUDGE LIDOW: Yes.

Okay, Mr. Lloyd, you can go ahead with cross exam.

MR. LLOYD: Okay, thank you.

CROSS EXAMINATION

BY MR. LLOYD:

Q Thank you, Ms. Williams, for being here today. I just wanted to begin by asking you about your working proximity to Mr. Kroenung in terms of your day-to-day activities.

Did you have any other interaction with Mr.

Kroenung, outside of your role as Deciding Official for his disciplinary action?

A Not to my knowledge, no.

Q Okay, so did you know him at all outside of that context?

A No.

Q Could you describe the extent of your knowledge how it was, how it is that you became the Deciding Official on his removal, then?

A That is the, one of the roles of the Director of Human Development. We are the Deciding Official in disciplinary cases that render a decision of 6-day suspension up to removal.

Q So, in your role as Director of Human Relations, are you also privy to information about accommodations that employees receive in NGA?

A No, I am not. I do not have any detailed insight on the specifics of the accommodations. I'm only told that reasonable accommodation had been approved, and mostly that is because of individuals that are within my chain-of-command. I do not have access to individual reasonable accommodation cases of others outside of my chain.

Q Who approves reasonable accommodation requests?

A That would be the, that would be the Office of the Director, I'm sorry, Director of the Office of Diversity and

Equal Employment Opportunity in NGA.

Q So, as the Deciding Official for Mr. Kroenung, could you describe the process that would have occurred before it came to you with regard to his discipline and his removal?

A Well, normally, in any case when there is discipline that's being considered, management is often asked to work at the lowest level with our employee relations team in HR. And so, progressive discipline is just that. It affords you the table of penalties based on the charges that are made.

And so, once management contacts employee relations, employee relations, if it's a formal charge, it can be informal up to formal. A Letter of Reprimand is a formal charge, a form of formal charge.

And so, when there's any type of discipline, or even if it's a Letter of Caution, there is collaboration between the HR office and the General Counsel, as well as management, to determine all the factors are in accordance with the table of penalties. In accordance with the charges therein, and Douglas Factors when appropriate.

And so, if, in fact, an employee has been rendered a disciplinary action and they are found to commit the same action or different actions, then it's a progressive approach. And then there's the, we go to the

next level in accordance with the table of penalties and so on.

Q Are you familiar with the PEB process?

A I am.

Q And so, how is the, where is the PEB Board, or I guess I'm being redundant in calling it the PEB Board, but where does the Board fit into that process that you just described?

A If, in fact, there's a charge that renders consideration, or management would like to propose a formal disciplinary action, 6-day suspension up to removal, it then enters into a Personnel Evaluation Board.

Q And so, do you, as the Deciding Official, interact with the PEB?

A No, I do not.

Q But you, do you receive, you receive a recommendation, is that correct, from the Board?

A That's correct.

Q And as part of your role as the Deciding Official, did you speak with Mr. Kroenung at all?

A No, I did not.

Q And did you speak with his Director Supervisor, Justin Nahlik?

A No, I did not.

Q Okay, and did you speak with Greg Gavin, who was

overseeing him on a detail, I guess you could say?

A No, I did not.

Q Do you have any knowledge about, or any information about whether it was necessary for Mr. Kroenung to be present in the building in order to perform his job duties?

A Only in accordance to what was stated by his first-line supervisor in the memo and record.

Q So, would it be accurate to say that you were accepting his supervisor's characterization on that detail?

A I, it was part of the package in consideration, yes.

Q Okay.

A Along with other parts of the package, which included the response by Mr. Kroenung.

Q At the time of Mr. Kroenung's removal were there, are you aware of job functions that NGA was performing by telework?

A That, in totality, no. Mainly, telework decisions are based on the first-line supervisor's determination on whether or not an employee can telework partially or fully.

Q So, as part of, I guess as part of the process, did you have any, do you have any information or did you form any opinion as to why telework was not available to Mr. Kroenung in his particular circumstance?

A From what I can recall from the memorandum to the record written by the supervisor, Mr. Kroenung was in a critical position as Aeronautical Analyst, which generally cannot be performed via telework.

And in addition, from what I recall, there was some training he was to take that could not be performed outside of the workplace, requiring him to come to work.

Q Okay, and did, so that's the what. Did anybody explain to you why? Did you form an opinion as to why he couldn't perform the training, for example?

A No, I didn't have any further discussion --

Q Okay.

A -- regarding that.

Q Thank you. And as far as you are aware, is testing for Covid part of Mr. Kroenung's job description?

A Testing was a mandated decision rendered by the Department of Defense based on the guidelines set at the time by the Office of Personnel Management and through guidance with, and other guidance, as well.

Q But was it part of Mr. Kroenung's job description?

A I have not read Mr. Kroenung's job description to determine that I can safely say that it's more than likely not in the job description itself as far as the duties of the job.

Q Okay, you referenced DoD guidance regarding

testing. Do you know which guidance that was, or are you able to name the title or any of the references?

A Not off the top of my head. It was a long time ago.

Q Do you think that it would be accurate to say that the proposed removal documents cited that authority?

A I would have to take a look at the proposed removal document to, again, I would assume it would, but I can't say for sure.

Q Didn't the testing requirement for NGA employees, didn't that end at some point?

A When the decision was rescinded by the Secretary of Defense, yes.

Q Okay, do you recall when that was?

A No, I don't have the exact date.

MR. LLOYD: I have no further questions, Your Honor.

ADMINISTRATIVE JUDGE LIDOW: Okay, Mr. Dailey, anything on redirect?

MR. DAILEY: I don't have anything, Your Honor.

ADMINISTRATIVE JUDGE LIDOW: Okay, well, Ms. Williams, again, thank you for your appearance. Before you disconnect, I just caution you not to discuss your testimony with anyone until you've been told otherwise, all right?

THE WITNESS: Yes, Your Honor, thank you.

ADMINISTRATIVE JUDGE LIDOW: Thank you. Take care.

Okay, so Mr. Dailey, that was the Agency's last witness?

MR. DAILEY: It was, Your Honor.

ADMINISTRATIVE JUDGE LIDOW: And are you concluding your case-in-chief at this point?

MR. DAILEY: We are, Your Honor.

ADMINISTRATIVE JUDGE LIDOW: Okay, so we will switch things over to the Appellant's case. And my suggestion would be maybe we can go ahead and get started.

I assume, Mr. Kroenung is going to testify?

MR. LLOYD: Yes, that's correct, Your Honor.

ADMINISTRATIVE JUDGE LIDOW: Okay, and what if we got started with his testimony on direct and maybe by the time we finish that, or are close to finishing that, that would be a good time to take like a lunch break, potentially.

MR. LLOYD: Could we take a quick break, a couple minutes right now?

ADMINISTRATIVE JUDGE LIDOW: Yes, sure. That's fine, but how does that sound, in general?

MR. LLOYD: That's okay with me.

ADMINISTRATIVE JUDGE LIDOW: Okay, so we'll have that be the plan. Let's go ahead and take a five-minute

break now, and we'll get started maybe, you know, close to, call it 10:55. If everyone can just be back on, and we'll go ahead and get started, okay?

MR. LLOYD: That should be good.

ADMINISTRATIVE JUDGE LIDOW: Okay, very good.

Stuart, we can go off the record.

COURT REPORTER: We are off the record.

(Off the record.)

COURT REPORTER: We are on the record.

ADMINISTRATIVE JUDGE LIDOW: All right, after taking a short break, we've reconvened. The Agency has concluded it's case-in-chief, and the Appellant is prepared to go forward.

Mr. Lloyd, are you calling your first witness?

MR. LLOYD: Yes, Your Honor. Appellant calls Mr. Kroenung, the Appellant.

ADMINISTRATIVE JUDGE LIDOW: Okay, and he's in the hearing space.

So, Mr. Kroenung, could I ask you to raise your right hand?

(Witness sworn.)

Whereupon,

CHRIS J. KROENUNG,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

ADMINISTRATIVE JUDGE LIDOW: Okay, go ahead, Mr. Lloyd.

MR. LLOYD: Thank you. Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. LLOYD:

Q Thank you, Mr. Kroenung. Do you mind stating your name for the record?

A Christopher J. Kroenung.

Q And did you work at NGA, National Geospatial-Intelligence Agency?

A Yes, sir.

Q When did you begin working at NGA?

A August 22nd, 2004.

Q And when you began at NGA, what were your work responsibilities?

A I was assigned to a new projected called, Global Reach. It was compiling approach procedures for special projects.

Q And how long were you at Global Reach?

A I believe it was at the end of 2007, beginning of 2008 when they ended the project.

Q And where did you go from Global Reach?

A I went to what they call the Geo areas.

Q And can you describe Geo areas?

A That's, basically, where you're assigned country or countries, and you're given aeronautical data from the host country. And you take that data and you input it into our database and make sure the data's correct, basically.

Q Okay, and how long were you at Geo areas?

A I was there from '07, '08, whenever I left the global reach, to about 2015.

Q And where did you go after Geo areas?

A I moved to the Terminal Enroute Procedures Branch, TERPS Branch. That was the Justin's branch.

Q And when you say Justin, you mean --

A Justin Nahlik. He wasn't the Branch Chief at the time that I moved, but I believe he took over in 2018.

Q And the acronym for that is TERPS; is that correct?

A Terminal Enroute Procedures.

Q And was TERPS your last assignment at NGA before being removed?

A In the system, but I was training, re-training in the Geo areas, which I had previously worked.

Q Okay, at the time of your removal, so that would be while you're working in TERPS, but re-training in Geo

areas, what were your job responsibilities?

A It was the same as the Geo areas responsibilities I had before. I had, I was assigned countries, and I would get the data in from the host source, and then I would input it into a system so they could be published in our, in our books for the pilots.

Q Okay, so those were your job responsibilities at Geo areas; however, at the time you were, at the time of your removal you were in training. What were your training responsibilities?

A I was assigned a trainer and, whenever he had time available, he would do on-the-job training.

Q And so, were you able to perform work responsibilities and training at the same time, then?

A Yes. They assigned me a few countries. I believe it was Malaysia and Singapore.

Q Okay.

A They gave me a minor work role while I was training so that I could check the host source, and I was inputting the data and the trainer would assist me if I needed assistance. And they would also check my work, make sure it was correct while I was in training.

Q And who was training you?

A You know, I, I can't remember his name. It's been about two years.

Q Okay.

A He was a, I believe a Lead in the area. I think his name was Jeff, but I'm not sure.

Q Okay, you describe sort of coming in to train as he became available. So, what did that look at in a typical work week?

A I probably trained with him maybe five or six hours a week.

Q Now, so as per your responsibilities at Geo areas, so you were re-training in Geo areas and, but you were formally assigned to TERPS. Was testing for Covid part of your job description in either or those roles?

A No, it was not.

Q But at some point the Agency began requiring you to test for Covid before arriving in the building; is that correct?

A You were allowed to enter the building, but you had to go directly to your supervisor's office and give him the test results. And if you did not, then they would escort you out of the building.

Q And when did that policy begin?

A December 13th, 2021.

Q And at the time, December 13th, 2021 where were you working? Was that at TERPS?

A I was still in TERPS at that time, yes.

Q And that was under Justin Nahlik?
A Yes, I --
Q Okay.
A -- was never re-assigned to another supervisor.
Q As far as the testing requirement goes, were you willing to participate in the testing?
A No, I was not.
Q Okay, and so what did you do about that?
A I was called into Justin's office, I believe, about the 8th of December; don't quote me on that. It was the 8th or the 9th, and he told me that starting on the 13th I would be required to show up with a negative Coronavirus-19 test, or I would be not allowed to come to the building.
Q Okay, and you're describing a personal interaction where he invited you into his office. Why was that invite necessary?
A I believe he didn't want to share my medical information with others, so he had a private meeting with me.
Q And what was your response when he informed you that you had to test?
A I was very upset and I told him I believed it was, you know, an illegal mandate. And I told him I wasn't going to test.
Q Now, could you describe what you mean when you say

that you felt it was illegal?
A I don't think it was consistent with Americans Disability Act, and I felt that the mandate should have ended due to the fact that the Omicron variant was a mild, it had mild symptoms.
And I also felt that it was retaliation for those people who refused to get the, the vaccine, and I never consented to testing. And also, at the time, the boosters had come out. So, that was kind of admission that the vaccine was not 100 percent effective.
Q As far as you were able to perceive, was there a requirement for people to receive the booster?
A No. The CDC required to shots of Pfizer, Moderna or one shot of J&J to be fully vaccinated. They never upgraded that to include boosters, but the boosters came out about September or October, and they were recommending getting them because the effectiveness of the vaccine would wane at that point within six months.
So, I believe most people that they were requiring the booster for at that time probably got the shot back in February, I guess. So, I guess that was for the initial people who got the vaccine.
Q Okay, so you said that it was not consistent with legal requirements, and you also named retaliation as an issue for you. Could you describe what you mean by the

retaliation?
A Yeah, like I said, the boosters were kind of a admission that the shots were ineffective, so I felt like they should have tested everyone if they were going to require testing. Not just the unvaccinated.
Q And so, who did you feel was retaliating?
A NGA, primarily, and DoD.
Q And what was it they were retaliating for?
A Not getting the vaccine. They, they, you know, they felt you weren't complying 100 percent with their mandate.
Q Okay, and did you have other hesitations about taking the vaccine?
A Yeah, the side effects. At that point, the side effects that came out, I read quite a bit on the CDC website about myocarditis, pericarditis, among many other side effects that were very dangerous.
Q Okay, I actually said vaccine, but I meant testing.
A Oh, testing. Yeah, it was very, it was very inconsistent, as I, we presented the evidence of the recalls. There was hundreds of thousands of recalls of these tests, these take-home tests which were allowed. I just didn't feel like they had the right to ask me to test unless I was, at least, symptomatic.

Q And did you explain these things to Mr. Nahlik?
A Yes. Also, I need to add that the CDC, at the time, only recommended taking the test when you're symptomatic. Even though they did tell the agencies that they were allowed to test us.
Could you repeat your question, please?
Q Sure. Did you discuss your objections with Mr Nahlik?
A Yes, I did.
Q And was that a single discussion, or was that a series of communications? How did you do that?
A I'm quite sure we had, we had interactions over, in the past. And also, I had many conversations with him about the vaccine and the, the masking.
Q And did you submit, at any point, for a religious accommodation or a medical accommodation to the testing?
A No, I did not.
Q And why didn't you?
A I didn't have a medical reason, and I'm not a very religious person, so I didn't think that would have been appropriate. I did not put in an accommodation because I had put in an accommodation for masking.
And I never finished that process because I had spoken to someone in the office and, that granted the accommodations, and they said that I would not be granted

the accommodation I wanted, but they would give me a minor accommodation.

So, I worked that out with Justin and Steven Keith when they gave me kind of an accommodation, but it wasn't the accommodation that I wanted, so I thought it was kind of a waste of time.

Q Now, what were your objections to wearing the mask?

A I had a medical note from my doctor that requested that I not wear the mask; that I would be allowed to wear a face shield. And that was against NGA policy so that's, when I talked to the Accommodating Official, they said that there's no way they would just let me wear a face shield at work. I would have to either telework or take leave and not, to get around the masking mandate.

Q Okay, and so what was the accommodation, the minor accommodation that you arrived at with Mr. --

A They allowed me, they allowed me to telework two days a week. And they allowed me to work evenings and weekends where I would be able to remove the mask at my desk more often. But I still, they still told me I had to wear the mask, but that was about it.

Q All right, so after you communicated to Mr. Nahlik that you weren't going to test; that you had an objection, what was his response?

A He didn't really say anything. He just, you know, he just kind of nodded and, you know, I had called in sick that next week. And he granted me the sick leave and I had to bring in a doctor's report.

But then, the two weeks after that I already put in for, I already put in for approved leave, and I was approved. So I, I was not there from the, the 13th to January 3rd. I was on either on sick leave or annual leave.

Q Okay, and what happened after January 3rd?

A Justin was off that day, but Paul McCullough was in there, and once I arrived at work he called me into his office, or someone told me he wanted me in his office.

I went to his office, and he requested the test and I said I refused to give him a test result. And he told me I was on admin leave, and I needed to leave the building, and then I left the building.

Q Okay, and how long did you stay away from the building from then?

A I believe March 7th is when it went down to low community levels, so I believe it was March 7th was the first week I came back into work.

Q And so, you were permitted to enter the building without a test at that point?

A Yes.

Q And how long did that last where you were able to

work inside the building?

A That went on until May 26th, I believe. That was the first week that we went up to either medium or high.

Q And how long were you out at that interval?

A I never re-entered the building from that point.

Q So, you've described a situation where you went, so at the time when you were -- well, I'll just restart my question.

At the time when you were working under Mr. Nahlik, you were working in TERPS. And then, but then you described a circumstance where you went from TERPS to re-train in Geo areas. So, what brought about that change?

A When I came back on March 7th, Paul McCullough had come and got, come to my desk, brought me in his office and Steven Keith was in there. And they told me since I was out for so long I would need to be re-trained in TERPS, the TERPS area.

And at that time, they had taken all of my countries away from me. I had no assignments at that time. And then, I told them I didn't want to do that. And they said well, what do you want? I said I would like to be moved back to Geo areas where I was back in 2015.

And they said, well, we'll see if we can work that out, and that was, basically, the end of the meeting.

Q And so, did they work that out?

A Yeah, it took about, I think, three weeks. Somewhere between two and three weeks. So, I was still in the TERPS area, you know, I felt I probably should have been moved over there and start my training right away, but they left me in the TERPS area for about three weeks.

And then, from that point on, right around the 21st to the 25th; somewhere in there, I went, started my training in Geo areas. And then, from there until about May 26th, I trained in Geo areas.

Q And at the, so you had been away, you had worked at Geo areas; you testified to that, and you had been away for several years. And so, you were re-training at Geo areas.

How would you describe your need for re-training upon arriving, again, at Geo areas?

A Well, they, they had a whole new software system, so I needed to be, you know, brought up to speed on that. And I just needed, basically, a short re-hashing of, of how to do the job. And, but I was already, within a few weeks I was back in their working areas, as I stated before. So, it didn't take too long to learn new the software.

Q So, just to get our timeframes correct, so we're talking end of March into the middle of April. So, by middle of April, beginning of May would it be, is it fair to say that you felt comfortable with the new software?

A Yes.
Q Did you feel like there was, there were any other areas where training was necessary for you to perform your jobs in Geo areas?
A I'm sorry, I don't understand the question.
Q Well, apart from the software, was there additional need for training?
A Not really. I could have done, you know, probably 90 percent of the job without having to ask anybody any questions at that point, so --
Q Okay, did your work responsibilities expand as your, as you became familiar and your training progressed?
A Yeah, kind of. I picked up, initially, I picked up, I think, Singapore. And then I picked up Malaysia, and I think I picked up one other country before May 26th. So, yeah, I did progress in my training. I picked up more responsibility as I progressed in the training.
Q And you described about five or six hours a week with the person who was training. What sort of information were they sharing with you during that training? What was the benefit you were getting?
A Mostly it was just learning the new system and going over some of the points of the job that, you know, I was more rusty on.
Q Did you feel that there, that telework was a

possibility for the work that you were performing?
A Yeah, there, I know there was people on telework there. They worked at least one, sometimes people worked two days a week at that time. I, yeah, I could have, I could have definitely worked a couple of days of telework.
They, they would, all the, all of the information that the host provides is online, so I could have looked that up. I could have notated the changes and then e-mail it to myself. That's what a lot of people do; they will e-mail the changes and they will come in and make the changes.
So, you can do a lot of analysis at home, and you can also do CBTs at home, and other things; work on resumes, self-assessments, things like that.
Q Okay, so you were saying that earlier for the masking accommodation, you were able to work off hours; nights and weekends. Is that something that would have been possible with your, with your responsibilities in Geo areas?
A No. Everyone had to test, no matter where the worked. So, if you were in the building you had to test.
Q Okay, but apart from the testing requirement, is there anything about the job itself that would have prevented you from doing it on nights and weekends?
A No.
Q So, you described several intervals of leave, and

some of that was annual, some of it was sick leave, some of it was leave without pay or administrative leave. Did that affect your training in any way?
A I don't, I don't believe so. If I call in a day sick, yeah, I wouldn't be able to train, but I don't think that had anything, had any effect at that time.
Q Okay, but was there anything special about the training that, that would -- sorry.
Was there anything special about the training that the absence would affect it negatively?
A Well, that the long absence I had or, I don't understand what the --
Q Put it another way. Could you just pick it back up when you came back in?
A I mean, to the TERPS training, the TERPS area, around there?
Q Back in the Geo areas?
A Oh yeah, yeah. If, if I had to come back, come back in a few weeks or a few months, it, I don't think there would have been a problem.
Q So when, at the beginning of August you and Mr. Nahlik had an interaction about the possibility of you using leave in order to avoid discipline for being absent from work. From your perspective, was there anything about the job that would prevent you from using leave in that way, or

using telework in the way that you proposed?
A I don't believe so. I, you know, I think I could have taken a couple of days of telework and a couple of days of leave each week --
Q Okay, and --
A -- until August 22nd, when they were recommended to stop testing; just the unvaccinated.
Q All right, and did you have leave accrued at that time?
A Yes, I, I had over 100 hours annual and sick leave as of August 1st.
Q So there's, in your judgment, was there plenty of leave available for you to cover the time between the beginning of August and the end of the testing requirement?
A No, I wouldn't have had enough leave to go to January. They can provide advanced leave for sick leave and for annual leave, and they can provide leave without pay beyond that.
Q Okay, so one of the things that came up in Mr. Nahlik's testimony was the possibility of, or I'm sorry, the difficulty in the fact that you didn't propose leave in advance. Why weren't you asking for leave like far in advance?
A I was on sick leave, and they wanted, they gave me a list of all these parameters I had to follow. I had to

get a note from my doctor. I had to have the prognosis, the diagnosis, and I had had a vehicle accident; I was in rehab at the time.

And so, I, I didn't feel that was necessary. I asked them if I could just go back to annual leave which, I don't even know if I was on annual or sick leave at the time, but I, I had asked them previous, before that if I could just stay on annual leave.

And it was, basically, a week-by-week thing, and I've never been denied for annual leave, even if I asked for it, you know, not in advance. So, that's not really a, that's not really a regulation they follow, and they, you know --

Q Okay, so in your time at NGA, which stretches back, you know, to the beginning of the aughts, did you have any formal disciplinary proceedings against you?

A No.

Q Okay, do you have any philosophical objections to any other parts of your, or any of the formal, any of your formal job requirements?

A I don't particularly like drug testing, but I did test for drugs whenever they required.

Q Okay, and did you refuse to drug test at any --

A No. No.

Q Were there other work responsibilities, apart from

testing, that you refused to perform?

A No.

Q When discipline was proposed against you, one of the, the justification that was proposed was mission degradation. What are your thoughts on that justification? Do you accept that justification?

A No, due to the fact that in 2020 we were sent home in February, and we weren't brought back until August. So, I mean, those six months were, everybody pretty much stayed home except for maybe one or two days we were brought in for a few hours to work.

And many people were allowed to stay on the emergency leave and/or telework all the way up, in other divisions, all the way up to about May of the following year. So, if that was, you know, allowing me to take that time off in 2022 was mission degradation, then I believe that as also mission degradation when they allowed people to stay home during all that time doing telework and on emergency leave.

Q Also as part of Mr. Nahlik's justification, he had mentioned that training couldn't occur remotely. Do you accept that justification?

A It would be difficult. I mean, it could be done, but it would, it'd definitely be difficult.

Q Do you think that, apart from the stated

justifications, do you believe that there was something else going on with the Agency; other unstated reasons?

A As to why --

Q For your removal?

A What's that?

Q For your removal and your discipline?

A No, I just think my, my general, you know, attitude and my statements towards the, the vaccine and the testing and the masking and other things; I think that definitely weighed heavily on, you know, aeromanagement and NGA management as far as my removal was concerned.

Q Were you aware of other accommodations to testing that co-workers received?

A Yes, I believe David Atkinson and Don Leggans were given accommodations so that they could either telework or go on admin leave or emergency leave, but I don't know what exactly they did for them.

Q Okay, and how did you form this opinion? How did you get that information?

A I discussed it with some of the fellow workers that I still have contact with. They informed me that, what was going on.

Q Were you aware of any other accommodations to testing besides David Atkinson?

A Yeah, Any Katze was allowed to test from home. He

was, I believe he made his own form. From what I was told, he, he had his wife or one of his kids sign off on the sheet, and then they allowed that.

Q Is there anything that you want to add to your testimony?

A I just, if they would have stuck with the February 5th date and the August 22nd, where they were ordered to test people, I, you know, I would have only had to take about three months and two weeks of either annual leave, sick leave or leave without pay during that time.

And that would have, that would have solved the problem, I think. And then I wouldn't have had to test, so that's just my contention.

MR. LLOYD: Okay, nothing further at this time, Your Honor.

ADMINISTRATIVE JUDGE LIDOW: Okay, well, Mr. Dailey, do you want to begin your cross exam now?

MR. DAILEY: Yes, Your Honor. I don't think I'll go more than maybe 15, 20 minutes at the most.

ADMINISTRATIVE JUDGE LIDOW: All right, then why don't we just plow ahead, and we can break after that. And that would be a good time because then we could do closings on the other side of lunch, right?

MR. DAILEY: Perfect.

ADMINISTRATIVE JUDGE LIDOW: Okay, very good.

Go ahead.

CROSS EXAMINATION

BY MR. DAILEY:

Q So, Mr. Kroenung, prior to your removal from the Agency, you never received a COVID-19 vaccine, right?

A No, sir.

Q And you were aware that weekly testing was required under DoD policy for unvaccinated employees when transmission levels were medium or high, correct?

A That is correct.

Q But you didn't agree with that policy, right?

A No, sir.

Q And you thought it was illegal?

A And discriminatory.

Q Yes, illegal, discriminatory. You thought it was ineffective, as well, you mentioned?

A Yes, sir.

Q But you never requested a medical or a religious accommodation from the testing requirement, correct?

A That is correct, sir. I didn't have the necessary medical, I didn't have like a heart issue or things like that that they had listed that you could ask for a medical, and as I said, I'm not very religious. I don't go to church on a regular basis, so it would be hypocritical of me to put in a religious exemption.

Q And then, when you actually applied for a medical accommodation for the masking requirement, they did engage you in an interactive process and tried to come up with some sort of accommodation, even if it wasn't the one you wanted?

A Exactly. They went against my medical advice from my doctor, and so, but Justin worked out something and I capitulated and allowed, allowed the masking. Even though it was difficult to breath in the masks.

Q And the annual leave policy is that you should request leave in advance, correct?

A Yeah, that's correct, but they don't always, you know, I've never been turned down for leave no matter when I asked for leave, so whether sick leave or annual leave.

Q Until?

A Until the Covid, until the Covid --

Q Yes.

A -- vaccine mandate came along.

Q So, once you were requesting significant amounts of unplanned leave, that's when they decided to deny same-day leave requests?

A Yes, sir.

Q And did they warn you that they were going to do that?

A I, I believe the week before, they, you have the e-mail. They stated that they were not going to allow me to

take anymore leave because of the degradation. So, that was the only warning I had received.

Q And in February, 2022 you received a Letter of Reprimand for failing to comply with testing, correct?

A Yes, sir, on February 17th.

Q And after receiving the Letter of Reprimand, you still refused, correct?

A That is correct.

Q And as a result, you received a 10-day suspension in July, right?

A That is correct.

Q And after serving the 10-day suspension, you still refused to test, right?

A That is correct.

Q On August 8th, did you comply with the testing policy?

A No, I did not.

Q On August 15th, did you comply with the testing policy?

A No, I did not.

Q Okay, I'm going to ask you a couple questions. You mentioned Mr. Leggans and Mr., you mentioned Mr. Atkinson and also Mr. Katze, Katze, I'm not sure how to pronounce that name.

A It's Katze.

Q Katze. You mentioned that they received accommodations for the testing requirement, correct?

A As far as I know. I don't know the exact details. I don't know what they, Mr. Katze was not given an accommodation. He told me he put in for a vaccine. What do they call it --

Q For vaccine exemption?

A Yeah, he put in for a vaccine exemption, and I guess he felt like that was handled poorly, so he didn't put anything in for a vaccine, or testing.

Q But he complied with testing requirements, right? He took tests?

A Yes, he did.

Q And, Mr. Leggans, did he take tests?

A As far as I know, he did not but I'm not 100 percent sure.

Q Okay, was he allowed to telework as an accommodation?

A I believe he used telework and leave, and he was assigned to an aeronautical area even though he was an aeronautical analyst. And it was an area which I was trained in, also, that I could have worked temporarily, but as far as I know, he did not test, but he --

Q And his -- I'm sorry.

A According to the previous lawyer, he said that

everybody tested, so I don't know if that's true or not.
Q And in terms of Mr. Leggans, who received telework and leave, he requested an accommodation, correct?
A As far as I know he did.
Q And then, Mr. Nahlik didn't supervise Mr. Leggans, did he at that time?
A No, he did not.
Q Did he supervise Mr. Katze?
A No, they worked in the same division.
Q Did he supervise Mr. Atkins?
A Atkinson, no, he did not.
Q Atkinson, sorry. Just stand by for one moment. I just want to check my notes.
MR. DAILEY: Your Honor, I don't think I have any further questions.
ADMINISTRATIVE JUDGE LIDOW: Okay, Mr. Lloyd, anything on redirect?

REDIRECT EXAMINATION

BY MR. LLOYD:
Q Mr. Kroenung, in your opinion, was it possible for you to work somewhere that would have allowed you to remain in compliance with the testing policy and avoid your discipline and termination?
A Yes, the Terminals Branch, the Image Product Library Branch; they both had their systems set up so they

could do everything from home. And I could have, in the area that I was in, if they would have allowed me to telework just a couple of days a week, I could have done some work at home.
And I could have, there, there was a possibility that, to, to work that out, but they didn't want to work that out, and I could have taken leave on top of that, so which they didn't allow me.
MR. LLOYD: Okay, and no further questions.
ADMINISTRATIVE JUDGE LIDOW: Okay, and on that point, Mr. Dailey, anything further?
MR. DAILEY: No, Your Honor.
ADMINISTRATIVE JUDGE LIDOW: Okay, thank you.
All right, Mr. Kroenung, that concludes your testimony.
Let's do this; Stuart, can we go off the record for a moment?
COURT REPORTER: We are off the record.
(Off the record.)
COURT REPORTER: We are on the record.
ADMINISTRATIVE JUDGE LIDOW: Okay, we're back on the record after taking a lunch break. It is roughly 12:40 p.m. Central Time. Both sides are finished calling witnesses, and we're going to proceed to closings, starting with the Agency since they have the burden of proof.

So, Mr. Dailey, whenever you're ready.

CLOSING STATEMENT ON BEHALF OF THE AGENCY

MR. DAILEY: Thank you, Your Honor. So, the Agency has the burden to show three things by preponderant evidence; that this charge was sustained, the nexus between its charge and the efficiency of the service, and that removal was within the outermost bounds of reasonableness. So, let's walk through each one.
First, the Agency has to prove by preponderant evidence that the charged actions occurred. This is an easy one to show because it's undisputed. Appellant admits that he refused to test on August 8th and August 15th.
Moreover, there's e-mails at Agency Exhibits 5 and 6 from the Appellant, unequivocally stating he will not comply with testing on those dates. So, the Agency's met its first burden to show that the charged actions occurred.
The second action that the, I'm sorry, the second, excuse me. The second burden to show is that a nexus between its charge and efficiency of the service. This is another easy one because the overall charge is conduct unbecoming, but the specifications that make up that charge are failing to comply with an Agency instruction of policy.

Now, the Board has well established, through case law, that Agency has a legitimate government interest in expecting its employees to follow instructions to ensure good order and discipline and mission accomplishment.
In Archuleta v. Department of Defense, the Board recognized the nexus for failing to follow instructions and the efficiency of the service, and the same thing holds through here.
This is a legitimate government interest, excuse me, there is a legitimate government interest in expecting employees to comply with Agency policies to ensure good order and discipline and ensure mission accomplishment. So, the Agency's met its second burden that there was a nexus between its charge and the efficiency of the service.
So, finally, the third burden of proof the Agency must establish by preponderant evidence is that the penalty of removal was reasonable in this case. The Agency provided evidence in the initial Agency file that the Appellant received a Letter of Reprimand for the same conduct, which had no affect on changing his behavior.
He continued to refuse to comply, and received a 10-day suspension. Within just a few days of serving that 10-day suspension, he sent an e-mail on August 1st, which is located at Agency Exhibit 4, telling his supervisor my status on refusing to test has not, nor

will it change.

Again, that was like three days after serving a 10-day suspension. So clearly, the 10-day suspension didn't even move the needle or was affective at all in curbing his behavior. And then, without missing a beat, he refused to comply once again on August 8th, at which time his supervisor initiated the removal process.

You heard testimony from the supervisor stating that he had no confidence that the Appellant would perform his duties going forward because what's to say that the Appellant won't subjectively and unilaterally disagree with another Agency policy; this time, say, one that's mission-related and decides he's not going to follow that?

Your Honor, I'm not overstating it when I say that in an intelligence agency like the NGA confidence in your employees' willingness to follow Agency policy, even if they happen to disagree with it, is critical to mission success.

The Agency cannot have employees unilaterally choosing to disregard policies because they subjectively believe the policy was inappropriate or ineffective, and that's what happened here. Management tried their best to get him to comply. He never would. He said he never will.

You heard the supervisor say that his lack of confidence isn't just about the testing requirement. It's

about the next pandemic. It's about the next mission-related policy that the Appellant happens to disagree with. Confidence in your employees' willingness to follow Agency policy, even if they disagree with it, is critical.

That's why the supervisor, the Proposing Official and the Deciding Official all agree that not only was removal reasonable, it was absolutely necessary. So, the Agency met it's third and final burden by showing that removal was both reasonable and appropriate in this case.

Now, let's talk for a moment about some of the defenses raised by the Appellant today. First, the DoD policy, the testing policy located at Agency Exhibit 1 was a lawful policy in effect at the time the charged conduct occurred. Full stop. There's no question that the policy was lawful and applicable to the Appellant.

At no time, even to this day, was there any finding that the DoD testing policy was unlawful. In fact, the EEOC, who are the arbiters of the ADA and Rehab Act, said it was lawful. So, regardless of how the Appellant subjectively felt about the policy, it was undisputably lawful, a lawful policy which he was required to follow as an Agency employee. So, that defense doesn't really hold any water.

Second, there as no reasonable accommodation in this case. Appellant argues that there were things

management could have done so that the Appellant could avoid testing. He wanted to continue taking significant amounts of leave. He wanted additional telework beyond what the standard policy allowed.

The problem is that he was seeking deviations from the leave policy and the telework policy for philosophical reasons. His request for last-minute leave and telework beyond normal Agency policy were not due to medical or religious concerns.

Absent a legal obligation to provide an accommodation, like there is with a medical or religious concern, it's within management's discretion whether or not to deviate from telework or leave policy.

Here you heard management say that there was mission degradation. Not knowing when or if he was going to come in on any given week caused his co-workers to pick up his slack. Also, management made the determination that training he was in at the time needed to be in-person. While the Appellant may disagree, it's well within management's discretion to make that call.

In fact, there's no evidence to suggest that those management decisions were retaliatory or abuse of discretion. In fact, you heard the Appellant testify that when he provided medical documentation for a medical accommodation for mask wearing, they approved the

accommodation. They approved an accommodation.

You also heard him say that they approved his last-minute leave request up until the time it became a problem. So, it's disingenuous to try to paint management as vindictive in this case, you know, we're here solely because of the Appellant's choices.

Additionally, the Appellant, through stipulated fact, attempted to make some argument that the policy was inconsistently applied to other employees. In order for inconsistencies to be material, the other employees should be similarly situated comparators.

In Fox v. Department of the Army, the Board held that in order for employees to be deemed similarly situated comparators must have reported to the same supervisor and subjected to the same standards of conduct and engaged in conduct similar to the Appellant without differentiating or mitigating circumstances.

Now, in Fox, the Board acknowledged that the comparator employees were not under the same supervision; therefore, the Board found that they were not similarly situated employees. Here, Mr. Glascock, Mr. Katze, Mr. Leggans and Mr. Atkins all had different supervisors than the Appellant.

You heard Mr. Nahlik testify that no other employees under his supervision, other than the Appellant,

engaged in this behavior. Therefore, like in Fox, the Appellant has not shown that there were similarly situated employees who were treated any differently.

Now, even though the analysis could end there because they had different supervisors, these employees also did not engage in conduct similar to the Appellant without differentiating or mitigating circumstances. Which is required by the Board in Fox v. Department of the Army.

Mr. Katze tested from home, but complied with testing. Mr. Glascock disagreed with the testing policy, but complied with testing. So, the first two have no similarities to the Appellant because they both complied.

Mr. Leggans requested and received a reasonable accommodation for testing. The Appellant never requested a reasonable accommodation. So, Mr. Leggans isn't a comparable employee. In terms of Mr. Atkinson, it's simply unclear what his situation is because it's based on secondhand witness perspective and it just can't hold much weight in terms of credibility.

It's conceivable that he had an accommodation or he complied with testing and didn't want to tell his like-minded friends that he subjected himself to testing. Regardless, he had a different supervisor, so Mr. Atkinson is not a comparable employee.

So, going back to the Board's definition of

similarly situated employees, not only did none of these employees have the same supervisor, none of them engaged in conduct similar to the Appellant.

Factors like the Appellant not requesting accommodation, or the fact that the Appellant was supposed to be undergoing in person training make the Appellant's situation unique. So, despite the assertion, there's simply no similarly situated employee in this case.

So, overall, their defense the DoD policy was lawful and in effect at the time, and there's no credible evidence that there were similarly situated employees who were treated differently. So, after determining that the Appellant's defense doesn't hold any water, we're back to where we started.

The Agency has the burden to show three things. Its charge was sustained; that's undisputed. No question he engaged in the conduct. Two, the nexus between its charge and the efficiency of the service. No doubt there's legitimate government interest in expecting employees to comply with Agency policies.

And three, removal was within the most outermost boundaries of reasonableness in this case. The Letter of Reprimand didn't change his mind. Ten-day suspension didn't change his mind. After the 10-day suspension, he said he will still continue his conduct.

That, coupled with the fact that there were serious concerns from his supervisor about whether the Appellant would follow policies that he happened to disagree with in the future, whether it's another pandemic or a mission-specific policy, made removal not only within the boundaries of reasonableness, it was absolutely necessary to bring confidence to the supervisor and ensure mission success.

So, we just walked through each element for which the Agency has the burden of proof, and showed the Appellant's defenses didn't hold water, relied on no speculation, pointed to real evidence along the way, and clearly established that the Agency met its burden.

So, as a result, Your Honor, the Board should uphold the action in this case. Thank you.

ADMINISTRATIVE JUDGE LIDOW: Okay, thank you.

Mr. Lloyd?

CLOSING STATEMENT ON BEHALF OF THE APPELLANT

MR. LLOYD: Thank you, Your Honor. Mr. Kroenung's closing remarks and testimony put forth today in his submissions and in his testimony; they're going to speak to points two and three of opposing counsel's presentation and burden of proof, the nexus between the charge and the efficiency of the service and the question of whether the penalty was, administered in this case was reasonable or

not.

So, shortly after Mr. Kroenung learned of the testing mandate that would begin on December 13th, 2021 he went on sick leave and then an extended period of annual leave. And from the time he returned from that leave, or soon after, the Agency, the testing mandate that the Agency enforced was under a cloud of a January ruling from the Southern District of Texas that found that Executive Order 14043 was likely unlawful.

The Judge issued a nationwide injunction, and that injunction remained until the Executive Order was rescinded, I believe in May of last year. Mr. Kroenung was aware of this ruling. He was also aware of reports prevalent at the time that the Omicron variant was mild compared to earlier variants.

He was also aware of reports that the vaccines that the Executive Order required, along with the test that the Agency required, had only received emergency approval from the FDA. They did not have the benefit of the full process of the approval for drugs and devices.

He was aware of multiple reports, reflected in his submitted exhibits, that the FDA found many of these, the tests that had been disseminated on the market, were faulty and the FDA recalled them. Reports, furthermore, indicated that the tests that were not recalled were often

inaccurate.

We submit that Mr. Kroenung was reasonable in hesitating at the prospect of participating in a mandate that emerged from an emergency landscape that seemed chaotic to him and unlawful. In order to work with his Agency, he offered to use leave, to use leave without pay to give himself the space he needed in order to avoid testing without running afoul of the Agency's operational need.

He offered telework and to be moved to other parts of the Agency where he would not need to be present in the building to perform his duties. The Agency refuted that gesture and, instead, pursued a path that ended in his termination, despite the fact that they had often relied on telework for their operational needs at other times during the pandemic.

By the time that the Agency fired him, Mr. Kroenung was also aware of several of his co-workers who had been allowed a variety of different arrangements to accommodate to their objections to testing. We submitted testimony that Andy Katze was allowed to test at home with his family members attesting to his tests.

We have testimony from Mike Glascock that at an office Christmas party occurred without the requirement that attendees test before attending, and that was in December of 2022.

We have testimony from, that Dave Atkinson never tested, but was allowed to attend in-person meetings when management so desired. We have that testimony from a close friend of Mr. Atkinson.

We also have testimony that Don Leggans also received an accommodation to testing. And to the question whether that's an appropriate comparator under Fox, I think that we need to remember that, as testimony from Ms. Williams indicated, this is an anomalous situation where everybody who's walking into the workplace is being required to test for a disease. This was not something that occurs on the day-to-day, and it seemed to be a novel challenge for everybody in the Agency.

But the purpose of a test for a disease is to determine the presence of a disease, and that can occur whether, regardless of who the supervisor is and what the job duties are. The only relevant question for a test looking for a disease is whether the person has the disease, and whether they're in the presence of other people.

And so, because of the anomalous circumstances, we need to keep that in mind as we address the question of comparators. The comparators here are the other people who were present in the building.

Some received accommodations and could attend work, either without testing, or the visitors who could come

into the building without testing. And so, when we're speaking of the comparator question, we need to keep that in mind.

So, this brings us to the question of what Mr. Kroenung was doing that could be harming the mission. And that seeks, you know, the nexus between the charge and the efficiency of the service. We have the assertion of mission degradation, but Mr. Nahlik did not seem to be sure what Mr. Kroenung was doing over at Geo areas, or how the, or what the training was doing to help him.

He, that he could be certain that Mr. Kroenung's request for leave and accommodation was contributing to mission degradation seemed inconsistent with his testimony where he didn't really seem to know exactly what Mr. Kroenung was up to.

We heard from Mr. Kroenung's Direct Supervisor, his Recommending Official and his Deciding Official. And none of them could any specifics about how telework led to mission degradation in this particular concept.

Mr. Kroenung objected to testing because he said it was unlawful, and he specifically named the Americans with Disability Act. The ADA limits the circumstances under which an employer may make medical inquiries.

As for the discipline for his not testing, those disciplinary documents reference "Reference C." And Reference C turns out to be "The Consolidated Department of Defense Coronavirus Disease Force Health Protection Guidance, Revision 2, 8-August, 2022."

That document references Executive Order 14043, which was enjoined as of January, 2022. It does not appear to reference any further authority to the question of testing. And so, on these two legal points, the application of the ADA in this particular context, and the legal authority for the testing mandate, Mr. Kroenung requests the opportunity for briefing and would welcome the opposing counsel's opportunity to brief, as well.

Now, this is important because it gets to the heart of what prohibitive personnel practice is in play here. According to the PPP, Mr. Kroenung is entitled to reassurance that he is judged on his merits, not by other factors.

Here we have acknowledgment that he was not formally disciplined in the past, and that testing was not part of his job description. His removal has to do with whether he would test or not, not his job performance. And, again, it goes to the nexus between mission efficiency and the charges.

He's also entitled to protection if he is

making others aware of unlawful activity. In this case, there are no other options for him. He was not a religious objector, and he was not somebody with a medical issue to testing. He alerted his supervisor of the situation and his feelings and thoughts that the testing mandate was unlawful.

Now, what if he is right, that it was not lawful? There doesn't seem to be any other options for him to, or any course of action that he could take, apart from the actions that he actually did take.

Mr. Kroenung's termination is unjustified because it was not based on his performance and it was unjustified because the guidance creating the testing mandate was, at best, not clearly lawful or, at worst, unlawful.

And so, therefore, the nexus between the charge and the efficiency of service has not been established by preponderance of the evidence. And to the question of whether the penalty was reasonable under the circumstance also, again, has not been established.

Mr. Kroenung was right to do what he did, and he didn't have any other options given his situation. He should be reinstated with backpay. Thank you, Your Honor.

ADMINISTRATIVE JUDGE LIDOW: Okay, thank you.

And, Mr. Dailey, I'll give you the last word if you want it.

CLOSING STATEMENT ON BEHALF OF THE AGENCY

MR. DAILEY: Thank you, Your Honor. Yes, just to highlight a couple points real quick. I don't think post-hearing briefs on the illegality of the DoD policy is necessary in this case. The Fifth Circuit he references was specific to the vaccination. It's clear that there was no injunction on a testing policy. To this day, the DoD testing policy has never been declared illegal.

The EEOC who arbitrates typically that ADA and Rehab Act has declared the DoD testing policy was within compliance with the ADA. So, I think this is just a red herring that we don't need to follow-up on in terms of legal briefs. Other than that, Your Honor, I don't have anything further. Thank you.

ADMINISTRATIVE JUDGE LIDOW: Okay, well, thank you both for those closings. And at this point, unless anyone has anything else they want to add or discuss on the record, I think we can go ahead and close the record and it'll be ready for decision at that point.

Okay, and I would just add, to the extent, Mr. Lloyd, that you were asking for, you know, a supplemental briefing on the question of the legality of the policy, just for purposes of keeping the record clear, I'll deny that motion.

I mean, that was an issue that was never

brought to, certainly, my attention. And if that's something that, ultimately, ends up being an issue at some future point, I'm sure, you know, there will be perhaps avenues to address it, but that's not going to be something that we're going to be addressing in the course of this hearing.

So, with that, unless anyone has any other questions, I can go ahead and close the record?

MR. DAILEY: Thank you, Your Honor.

MR. LLOYD: Nothing further, Your Honor.

ADMINISTRATIVE JUDGE LIDOW: All right, Stuart, we can go off the record.

COURT REPORTER: We are off the record.

(Whereupon, at 1:00 p.m., the above-entitled hearing was concluded.)

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, STUART KAROUBAS, depose and say that I am a direct record court reporter doing business in the State of Illinois; that I reported verbatim the foregoing proceedings and that the foregoing is a true and correct transcript to the best of my knowledge and ability.

_____
STUART KAROUBAS

SUBSCRIBED AND SWORN TO
BEFORE ME THIS _____ DAY OF
_____, A.D. 2025.

_____
NOTARY PUBLIC