



Sample Decision Notice

This sample notice is provided as a guide for supervisors but is not to be considered a model or even a suggested version for final use. The names used in this sample are fictional. Actual notices will include more specific information about the performance deficiencies and must include any additional statements or referrals required by agency policy or collective bargaining agreements that may exist. Supervisors should contact their human resources offices for technical assistance and review of actual notices.

SUBJECT: DECISION TO REMOVE FOR UNACCEPTABLE PERFORMANCE

**FROM: BEN TAYLOR, ASSISTANT DIRECTOR
FOR ADMINISTRATION**

**TO: JOHN BROOME
EMPLOYEE RELATIONS SPECIALIST**

In a notice dated and received by you on October 20th, Maria Sanchez, Chief of Employee Relations, proposed to remove you from your position of Employee Relations Specialist, GS-201-13 and from the Federal Service, on the basis of unacceptable performance.

As the deciding official, I have carefully reviewed all the material that formed the basis for the proposal and that was also made available for your review. I have also given full consideration to our meeting of November 2nd, during which you presented your oral response to the proposed removal as well as your written response. While you mentioned several times that you believed I had already made up my mind about this case and that your response was meaningless, you nevertheless challenged, in general terms, the validity of the opportunity period and alluded to many technical inaccuracies. Despite my request that you provide me with a listing of specific errors that occurred in the course of the opportunity period, you never did so. Without any specific information, I cannot give your statements any weight in my considerations. Nonetheless, I have reviewed the documentation for technical inaccuracies and have found none.

You did state that you believed you had a heavier workload than the other specialists in the branch and that it was not possible to keep up with all of the calls from supervisors who needed assistance. However, I have reviewed the monthly case report from your branch and have found that you were assigned approximately the same number of cases to handle as your

colleagues during June and July and were given fewer cases, comparatively, during the month of August.

Secondly, your cases were not the most complex or arduous available. Although several were complicated, I found nothing of a difficulty that a specialist at the grade 13 level should not be expected to handle. I cannot, therefore, find any justification for your continuing failure to contact supervisors in a timely manner or your failure to meet your assigned deadlines. The evidence in the proposal notice and evidence file clearly indicates that you failed to meet the requirements for Fully Successful performance regarding the timeliness of your work.

You did not specifically respond to the issue of your failure to provide accurate technical guidance to supervisors and managers. I find the evidence compelling that your supervisor attempted to give you a mechanism for reviewing current case law and ensuring that your advice reflected any and all recent changes in the law. It is also obvious that, in many cases, you did not conduct appropriate research prior to advising managers and drafting notices that had to be revised or completely redone based on poor preparation on your part.

Your response dealt with the issue of “blame” for cited errors or delays; you felt you were being blamed for actions that were not your fault. The real issue is not one of blame but of responsibility; the examples cited by your supervisor clearly indicate that you have too frequently not met your responsibilities and have shown no indication of improvement or even of particular concern. While you have demonstrated an ability to perform this job in the past, you are currently failing to carry out one of the key functions and responsibilities of the position, and have made no effort to improve in this respect.

[An actual decision notice will discuss all pertinent issues raised by the employee in the response. Deciding officials may need to look into statements in the response or appoint a factfinder to determine the validity of some statements.]

I have very carefully reviewed your allegations of disability discrimination based on your medical documentation, including the diagnosis of diabetes. Although you did not inform your supervisor of this condition until 2 weeks into the opportunity period, I concur with the assessment by Ms. Sanchez that your medical condition did not impact on your performance and that there was no need to alter the conditions of the opportunity period. Memoranda of Counseling reflect that your work was handled by coworkers or by your supervisor on any day that you were on sick leave for doctor’s visits. I have reviewed your statements regarding your supervisor’s negative attitude toward you after you revealed your condition. However, the examples you cite are of your supervisor’s counseling you concerning errors in your work or

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criticizing your failure to research appropriately. These reactions from Ms. Sanchez are typical of any supervisor reviewing an employee's work during an opportunity period and I cannot find any evidence of a discriminatory motive. Nor can I find anything to support your argument that the opportunity period should have been discontinued until you got your medical situation under control.

I find that all the instances of unacceptable performance specified in the proposal notice of October 20th are sustained and that your performance in the critical element, Providing Technical Assistance to Managers, failed to meet the Fully Successful standard, as clarified in the opportunity period notice you received from Ms. Sanchez. I also find that you were given a reasonable opportunity to demonstrate acceptable performance, but failed to do so. Therefore, I find that your removal for unacceptable performance is warranted.

Accordingly, it is my decision that you be removed from your position of Employee Relations Specialist, GS-201-13, and from the Federal Service, effective November 30th. You will be continued in an active duty status with pay until the effective date of this action.

Because you have raised the argument that your medical condition, diabetes, prevented you from working in your position, I am notifying you of your option to file a request for disability retirement with the U.S. Office of Personnel Management. Should you wish additional information on how to submit this application for retirement, please contact Ms. Sarah Gloucester at (202) 555-1212. Disability retirement applications must be filed within 1 year of your last day of employment (November 30th).

Additionally, in accordance with Title 5 USC 4303 and 7121(e) and (f), you have the right to appeal this action to the Merit Systems Protection Board (MSPB).

You may submit an appeal at any time after the effective date of this action, November 30th, but not later than thirty (30) calendar days after that date. If you do not submit an appeal within this timeframe, the MSPB will dismiss it as untimely filed unless a good reason for delay is shown. You may obtain a copy of the appeals form and a copy of the Board's regulations from the MSPB website at <http://www.mspb.gov>.

Your appeal must be filed with the MSPB regional or field office serving the area of your duty station when the action was taken. Based upon your duty station, the appropriate field office is *[identify appropriate regional office]*. MSPB also offers the option of electronic filing at <https://e-appeal.mspb.gov/>.

The Board will send an Acknowledgment Order and copy of your appeal to [contact information including the official's mailing address, email address, telephone and fax number.]

[Note that under the Board's October 2012 regulations, decision notices must also include:

Notice of any right the employee has to file a grievance or seek corrective action under subchapters II and III of 5 U.S.C. chapter 12, including:

(1) Whether the election of any applicable grievance procedure will result in waiver of the employee's right to file an appeal with the Board;

(2) Whether both an appeal to the Board and a grievance may be filed on the same matter and, if so, the circumstances under which proceeding with one will preclude proceeding with the other, and specific notice that filing a grievance will not extend the time limit for filing an appeal with the Board;

(3) Whether there is any right to request Board review of a final decision on a grievance in accordance with § 1201.155 of this part; and

(4) The effect of any election under 5 U.S.C. 7121(g), including the effect that seeking corrective action under subchapters II and III of 5 U.S.C. chapter 12 will have on the employee's appeal rights before the Board.]

Notice of any right the employee has to file a complaint with the Equal Employment Opportunity Commission or to grieve allegations of unlawful discrimination, consistent with the provisions of 5 U.S.C. 7121(d) and 29 CFR 1614.301 and 1614.302.]

[Note that this sample involves a non-bargaining unit employee who would not have grievance rights under a collective bargaining agreement. It is essential that you obtain information from the human resources office regarding appropriate appeal and/or grievance rights for bargaining unit employees.]

Additionally, because you have alleged that this action was discriminatory based on your medical condition, I am informing you of your right to file a complaint with the agency's Office of Equal Employment Opportunity (EEO). You may elect to file an appeal with the MSPB or to file a complaint with the EEO office, but you may not elect both at the same time.

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You may bring any questions you have about this removal to me and I will explain any points that are unclear to you. If you have questions about your rights or the procedures used in this matter, you may contact Mr. Garrett Johnson, Director of Human Resources.

Please sign and date the attached copy of this memorandum, which serves only to acknowledge the date on which you received it.

Receipt Acknowledged

Signature

Date