



Fw: Douglas Factors for Mr. Lewis
Mark DePlasco to: Barbara January

10/13/2010 11:58 AM

Sent by: Mark DePlasco

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From: Mark DePlasco/AWP/FAA
To: Clemortee R Marable/AWP/FAA@FAA
Date: 10/06/2008 02:39 PM (e1437)
Subject: Douglas Factors for Mr. Lewis

Sorry I forgot to add the document.

Mark A. DePlasco
Acting Manager, Golden Gate District



650-826-0158 LewisDouglasfactors.doc

The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others. (You must be able to explain why you believe the imposed action is justified and why a lesser penalty would not modify the employee's behavior.)

A) If removal, why not lesser sanction?

B) Did you consider other alternative sanctions? If not, why? If so, why did you not mitigate?

Factor 12 – Response:

- A) If Mr. Lewis accepted responsibility for his conduct and actions consideration for a lesser charge could be addressed. Since Mr. Lewis denies almost all allegations, blames others for his misconduct and shows absolutely no remorse or contrition for his conduct a lesser charge is not warranted. This behavior will continue because Mr. Lewis sees no fault or error in his behavior and conduct in the work place.
- B) Mr. Lewis was asked to consider a medical retirement but he refused.

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Name Mark A. DePlasco

I hereby certify that I have considered the twelve (12) Factors as indicated above in making my penalty determination

Signature _____ DATE _____

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DOUGLAS FACTOR CHECKLIST

As a manager with authority to take disciplinary and/or adverse action, you must review and consider all of the following Factors. For those Factors that do not apply, just mark "N/A." Any Factor you find as aggravating must be discussed in the proposal notice so the employee will have an opportunity to reply to that negative Factor. Additionally, after receipt and consideration of an employee's reply, you must address any mitigating Factors raised by the employee.

Below is a checklist, which provides a summarization of most of the basic principles of these factors. Your L/ER Specialist can assist you in interpreting these Factors. This checklist may be a useful in determining the "reasonable" penalty.

FACTOR EVALUATION CHECKLIST

Your written response for each factor, should address the applicable questions under each section.

Factor 1 – Seriousness of Offense

Aggravating Mitigating Neutral N/A

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. (This factor is one of the most important factors and must be discussed in the proposal notice. Your analysis of this factor goes to the essence of the charge and penalty proposed.)

- A) How does the charged conduct affect the agency's operations and/or mission?
- B) Was the action intentional/deliberate or inadvertent? Explain.
- C) Was it an isolated incident or was conduct repeated? Explain.
- D) Did the employee gain anything from the conduct? What?

Factor 1 – Response:

- A) Mr. Lewis' conduct is detrimental and a significant distraction to the operation at Concord ATCT. His actions adversely affect the agency's operations and mission by causing turmoil and distractions in the Tower and by demonstrating physically threatening behavior to his supervisor, manager and peers.
- B) After reviewing all associated documentation, including Mr. Lewis' response to the Proposal, I believe his actions were intentional and deliberate. Additionally, in his response Mr. Lewis continues to make excuses for his behavior and actions.
- C) This was not an isolated incident as detailed by an official investigation and numerous statements from management and peers.
- D) The employee did not gain anything form this conduct.

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Factor 2 – Job Level and Type of Employment

- Aggravating Mitigating Neutral N/A

The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public and prominence of the position.

- A) Is the employee a manager?
- B) Does the person occupy a position trust?
- C) How does the employee's charged conduct related to his/her position of trust?
- D) Does the employee occupy a position of prominence? Explain.

Factor 2 – Response:

- A) The employee is not a manager.
- B) Mr. Lewis does occupy a position of trust in his safety related duties as an air traffic controller.
- C) Mr. Lewis' charged conduct is detrimental to the safety and efficiency of the air traffic operations at Concord Tower and the Agency. His position of trust is significantly diminished as a result of his charged actions.
- D) The employee does not hold a position of prominence.

Factor 3 – Prior Misconduct

- Aggravating Mitigating Neutral N/A

The employee's past disciplinary record.

- A) Does the employee have a prior disciplinary record? What for? When?
- B) Is the prior discipline for similar conduct as the current charge(s)? Explain
- C) Is the discipline a matter of record?
- D) Is it time-barred, i.e. reprimand over 2 years, contract article?
- E) Is the prior discipline still being challenged? Explain.

Factor 3 – Response:

- A) Mr. Lewis does not have a prior similar conduct issue as the current charge.
- B) N/A
- C) N/A
- D) N/A
- E) N/A

Factor 4 – Employee's Past Work Record

- Aggravating Mitigating Neutral N/A

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The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers and dependability. (This factor is very important. You must consider the employee's overall performance, awards and years of service. Note: Do not make the mistake to find a lengthy service record as aggravating because the employee should know better. Instead, a lengthy service record is mitigating because the FAA has invested a great amount of time and money into the employee's development)

- A) Length of service?
- B) Prior work record? What do appraisals say?
- C) Ability to get along with others?
- D) Dependability

Factor 4 – Response:

- A) 21 years.
- B) Mr. Lewis was not at Concord ATCT long enough to receive an appraisal, he began his inappropriate behavior soon after his arrival at Concord ATCT.
- C) Mr. Lewis routinely conflicted with both management and his peers at Concord ATCT.
- D) Mr. Lewis was not a dependable employee and he continued to not follow proper rules and procedures and frequently violated his expected Standards of Conduct.

Factor 5 – Erosion of Supervisory Confidence

Aggravating Mitigating Neutral N/A

The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisor's confidence in the employee's ability to perform assigned duties. (The level of trust and confidence you have or no longer have plays a big role and seriously impacts the impartial third party. Do not pay just lip service to this factor. Very often a third party will ask the manager during their testimony why their confidence and trust have been affected. Be prepared to give a sincere answer.)

- A) Is there a loss of trust and confidence? Explain without vague conclusions.
- B) How do job duties relate to a loss of trust and confidence?

Factor 5 – Response:

- A) There is a complete loss of confidence in Mr. Lewis' ability to perform in his safety related duties because of his verbally abusive and physically threatening behavior, his dishonesty during an official Report of Investigation, and prior refusal of services to ATC users.
- B) Air traffic control is a safety related duty that requires complete honesty and integrity. For safety and efficiency of the National Airspace System air traffic controllers must demonstrate behavior that proves they are able to follow

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directions, adhere to safety rules and procedures, and honestly and accurately reflect their actions and intent. Mr. Lewis displays non of these essential work characteristics.

Factor 6 – Consistency of penalty

- Aggravating Mitigating Neutral N/A

The consistency of the penalty with those imposed upon other employees for the same or similar offenses. (You must be primarily concerned with how you have previously disciplined others for similar misconduct. Be prepared to justify why you have decided to pursue discipline that may be significantly different. Also, be sure to discuss this factor with your L/ER Specialist who will be familiar with similar misconduct and the typical discipline.)

A) Is the penalty consistent with that imposed for other employees for similar charges? If not, why?

Factor 6 – Response:

A) The penalty is consistent with that imposed for other employees for similar charges.

Factor 7 – Consistency of Penalty with Table of Penalties

- Aggravating Mitigating Neutral N/A

Consistency of the penalty with any applicable FAA Table of Penalties (TOP). (The TOP is a guide, but refer back to 6.)

A) Is the charged conduct listed in the Table of Penalties?

B) If not, what offense is most similar?

C) Is the proposal penalty within the range identified in table? If not, why?

Factor 7 – Response:

A) The charged conduct is listed in the Table of Penalties.

B) N/A

C) The proposed penalty is within the range identified in the Table of Penalties.

Factor 8 – Notoriety

- Aggravating Mitigating Neutral N/A

The notoriety of the offense or its impact upon the reputation of the FAA. (This factor is not used often, but if the employee has made the newspaper or other media, you need to include that information in the proposal notice. Remember that customers may be other FAA organizations. So if the behavior has resulted in complaints internal to FAA, it has drawn a notoriety to your organization and should be so addressed.)

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A) Any publicity regarding conduct? What type? Explain.

B) Any complaints, concerns registered by customers, public, etc.?

Factor 8 – Response:

A) There is no publicity regarding this conduct.

B) There have been numerous complaints related to Mr. Lewis' air traffic control service to pilots flying in/out of Concord ATCT.

Factor 9 – Notice of warning about conduct

Aggravating

Mitigating

Neutral

N/A

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. (This is important. Was the employee aware of the FAA Standards of Conduct and TOP? Are FAA regulations or rules available for review by the employee? Have there been postings, briefings, staff meetings where standards of conduct were discussed or is the offense of such a nature that common sense dictates right from wrong.)

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A) Any non-disciplinary counseling documented? Copies given to employee?

B) Any briefings/training involving charged violation?

C) Any general Standards of Conduct briefings? When?

D) Any letter of expectations provided to the employee about conduct?

Factor 9 – Response:

A) Numerous non-disciplinary counseling sessions were conducted and documented for Mr. Lewis.

B) Facility wide training was administered concerning inappropriate behavior and the use of offensive or derogatory words and comments.

C) A general Standards of Conduct briefing was given to employees at Concord ATCT.

D) Mr. Lewis received numerous verbal and written briefings and counseling session on appropriate behavior and adherence to air traffic control rules and procedures.

Factor 10 – Potential for Rehabilitation

Aggravating

Mitigating

Neutral

N/A

Potential for the employee's rehabilitation. (This is also an important factor. Is the employee in denial – that is, they do not believe they did anything wrong, are blaming someone else for their misconduct, etc. Or, has the employee accepted responsibility for the misconduct.)

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A) Early truthful admission?

- B) Remorsefulness/contrition?
- C) Getting assistance with the problem?
- D) Reporting of Misconduct before investigation?

Factor 10 – Response:

- A) Mr. Lewis refuses to take responsibility for his deplorable conduct and in fact is dishonest when questioned by official investigators. He continues to make excuse after excuse for his offensive conduct in the workplace.
- B) Mr. Lewis shows no remorse or contrition, he does not accept responsibility for his actions.
- C) Mr. Lewis does not seem to think he has a problem therefore he doesn't appear to want assistance.
- D) Mr. Lewis continues to blame others for his conduct and has in fact tried on numerous occasions to blame others and try to divert attention from his actions to others.

Factor 11 – Mitigating Circumstances

- Aggravating Mitigating Neutral N/A

Mitigating circumstances surrounding the offense such as unusual job tension, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter. (An employee may offer information during their reply that may be mitigating, such as, personal crisis which is impacting their judgment, medical issues, etc. Any mitigating information brought forth by the employee must be considered. The decision letter must summarize the employee's reply and an explanation why you do or do not find their argument persuasive.)

- A) Personal problems?
- B) Emotional distress?
- C) Medical condition?
- D) Unusual job tensions?
- E) Malice or provocation by others?

Factor 11 – Response:

- A) I'm not aware of any.
- B) None noted.
- C) None noted.
- D) No more than any other controller at Concord ATCT.
- E) None documented.

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Factor 12 – Effectiveness of a lesser sanction

- Aggravating Mitigating Neutral N/A

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