

CHAPTER 5. SUSPENSION, REASSIGNMENT OR DETAIL AND
TERMINATION FROM SENSITIVE POSITIONS

16. SECRETARY'S AUTHORITY. Acting under 5 U.S.C. 7532 and Executive Order 10450, the Secretary may, at his absolute discretion when considered necessary in the interests of national security, suspend with or without pay, or reassign or detail temporarily to a nonsensitive position, and then remove, any employee from a sensitive position. The Secretary's determination on removal shall be conclusive and final.
17. PROCEDURE FOR MAKING SECURITY DETERMINATION.
- a. An employee may be suspended with or without pay before his employment is terminated under 5 U.S.C. 7532 and Executive Order 10450, or he may be reassigned or detailed temporarily to a nonsensitive position in which the interests of national security cannot be adversely affected by the employee. In event of reassignment or detail, if the Secretary decides to initiate removal proceedings against the employee, he may do so, as the suspension requirements of the act are considered to have been met by the reassignment or detail. However, whether the employee is suspended with or without pay, or reassigned or detailed temporarily to a nonsensitive position, the Secretary must comply with the following procedures before terminating the employee.
- b. Permanent and indefinite employees. A permanent or indefinite employee who has completed his probationary or trial period and who is a citizen of the United States shall be given, after his suspension with or without pay, reassignment or detailed to a nonsensitive position, and before removal under the act and Executive Order:
- (1) A written statement within 30 days after his suspension with or without pay, or reassignment or detail to a nonsensitive position of the charges against him, which shall be subject to amendment within 30 days and which shall be stated as specifically as security considerations permit;
 - (2) An opportunity within 30 days (plus an additional 30 days if the charges are amended) to answer the charges and to submit affidavits;
 - (3) A hearing, at the employee's request, by a duly constituted agency hearing board for this purpose. However, the employee may request postponement of the hearing for a reasonable period of time if necessary to prepare his presentation.

- (4) A review of his case by the Secretary, or some official designated by him, before a decision adverse to the employee is made final; and
 - (5) A written statement of the decision of the Secretary.
- c. Other employees. After suspension without pay, or reassignment or detail to a nonsensitive position, under 5 U.S.C. 7532 and the Executive Order, an employee not covered by paragraph b above shall, to the extent the Secretary determines that the interest of the national security permits, be notified of the reasons for his suspension, or reassignment or detail. He shall have the opportunity within 30 days after the notification to submit any statements or affidavits to the Secretary about why he should be restored to his sensitive position or, if he has been removed, why he should be reinstated. The employee may be removed whenever after suspension without pay, reassignment, or detail, the Secretary determines that the removal is necessary or advisable in the interest of the national security.

18. RECOMMENDATION TO SUSPEND.

- a. Sufficient derogatory information may indicate a need by the Inspector General to recommend to the Secretary suspension of an employee occupying a sensitive position.
- b. Before submitting his recommendation to the Secretary, the Inspector General makes available, to the following, pertinent facts for comment:
 - (1) The head of the appropriate primary organization with jurisdiction of the employee;
 - (2) The General Counsel; and
 - (3) The Assistant Secretary for Administration
- c. The comments of the officials in (1), (2) and (3) are incorporated in the report the Inspector General submits with his recommendation to the Secretary.

19. SECRETARY'S DETERMINATION ON IMMEDIATE SUSPENSION. If the Secretary deems suspension with or without pay necessary in the interests of national security, he directs the head of the primary organization concerned, or some other official designated by the Secretary, to suspend the employee immediately. If the

Secretary finds that a temporary reassignment or detail to a nonsensitive position is appropriate or otherwise does not deem suspension necessary, a written determination to that effect is made a part of the investigative file of the employee.

20. FACTORS CONSIDERED IN DETERMINATION.. Several factors are considered in making the determination required by paragraph 19. They include, but are not limited to:
 - a. The seriousness of the derogatory information developed;
 - b. Possible access, authorized or unauthorized, by the employee to defense information or material;
 - c. Opportunity, by reason of the nature of the position, for committing acts adversely affecting the national security; and
 - d. Whether temporary reassignment or detail to a nonsensitive position is adequate to protect the interest of national security.
21. NOTICE TO EMPLOYEE. If the employee is suspended, the General Counsel notifies the suspended employee as soon as possible of the reasons (charges) for his suspension and the alleged facts underlying those reasons. The notice is in writing, and is as specific and detailed as security considerations, including the need for protection of confidential sources of information, permit. The Civil Service Commission instructions provide that the Department of Justice is to be consulted to assure that the rights of an employee are fully considered before an agency issues a letter of charges under Executive Order 10450. In the Department, the General Counsel shall arrange for the necessary consultation with the Department of Justice.
22. EMPLOYEE OPPORTUNITY TO REPLY. A suspended employee has the right to submit, within 30 calendar days after notification of his suspension, to the General Counsel, statements and affidavits refuting or explaining the stated reasons for suspension. Such statements and affidavits shall be considered by the General Counsel for sufficiency, and, after consultation with the Assistant Secretary for Administration and the Inspector General, a joint recommendation for the disposition of the case shall be made to the Secretary. If the General Counsel, the Assistant Secretary for Administration, and the Inspector General are in disagreement,

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individual recommendations shall be made by them.

23. SECRETARY'S DETERMINATION ON REVIEW. The Secretary reviews the recommendation(s) of the General Counsel, the Assistant Secretary for Administration, and the Inspector General. On the basis of

the recommendations and of his own review of the case, the Secretary makes his determination of the case as follows:

- a. He finds that reinstatement of the suspended employee in his sensitive position is clearly consistent with the interest of the national security. The Secretary restores the employee to duty in the position, and the employee is compensated for the period of suspension.
 - b. He does not find that reinstatement of the suspended employee in his sensitive position is clearly consistent with the interest of the national security, but finds that employment of the suspended employee in a nonsensitive position is appropriate. The Secretary may restore the employee to duty in such other position, provided a suitable position for which the employee is qualified is available. The employee may be compensated for the period of suspension if he were suspended without pay.
 - c. He does not find that reinstatement of the suspended employee to any position is permissible. The Secretary terminates the employment of the suspended employee. In this determination, the employee is given a written notice of termination.
24. CONSULTATION WITH DIRECTOR OF PERSONNEL. The Director of Personnel is consulted as described in paragraph 5.e., on the procedures to be followed with respect to the suspension and removal of any employee occupying a sensitive position. The Director is also responsible for promptly furnishing the Inspector General copies of all notices of personnel action taken in security cases.
25. NOTICE TO CIVIL SERVICE COMMISSION. The Inspector General promptly furnishes copies of all notices of personnel action taken in security cases to the Civil Service Commission.