



Reply to the attention of:

JUL 13 2009

MEMORANDUM FOR: ROBERT W. WHITMORE

FROM: DONALD G. SHALHOUB  
Deputy Assistant Secretary

SUBJECT: DECISION LETTER

By memorandum dated April 3, 2009, Steven F. Witt notified you of a proposal to remove you from your position in the Occupational Safety and Health Administration (OSHA) as Supervisory Economist, GM-0110-15, and from the Federal Service, no sooner than 30 calendar days from your receipt of his memorandum.

You had seven (7) calendar days from your receipt of Mr. Witt's memorandum, or until COB April 13, 2009, to submit a written and/or oral reply to me regarding the reasons and specifications contained therein. On April 8, 2009, your representative faxed Mr. Doug Goodell, OSHA Human Resources Officer, a request for an extension, which was granted. Your representative submitted a written reply on May 8, 2009 and an oral reply took place on May 13, 2009.

I have made a decision based on the proposal notice, supporting documentation, your written and verbal replies regarding the proposed removal and your supporting documentation. After reviewing all the documents, including both your oral and written replies, I find sufficient evidence to support and sustain the proposed removal action.

In determining the appropriate penalty in this case, I have considered all the factors identified by the Merit Systems Protection Board (MSPB) in *Douglas v. Veterans Administration*, 5 M.S.P.B. 313 (1981). I have fully considered the nature and seriousness of your misconduct. As a Federal employee, you are expected to conduct yourself at an acceptable level of courtesy and professionalism. As a senior level employee, it is inexcusable and intolerable to engage in a high degree of disruptive, intimidating and inappropriate behavior in the workplace. As a representative of the Agency's management team, it is imperative to maintain the highest degree of integrity, judgment and professionalism. You are well aware of the Department's policy prohibiting harassing and intimidating conduct in the workplace and it is your responsibility as a management official to promote this and other agency policies. I am convinced by the record before me that your conduct and actions are contrary to this policy, have seriously damaged your credibility, and violated the trust placed in you as a Federal employee.

Your actions undermine my confidence in your judgment and ability to carry out your responsibilities in an appropriate manner. Furthermore, your pattern of continuously subjecting co-workers to your intimidating and disruptive behavior has been unnerving to your co-workers and others in OSHA. Numerous OSHA employees in both the Region and National Office have indicated that your behavior has interfered with their ability to perform their duties and some have gone to considerable lengths to avoid you, including moving to other workstations or even changing their work schedules. Several employees have also expressed a concern for their physical safety in the office when you are present in the building. Again, your conduct is incompatible with the Department's commitment to provide a work environment free from all forms of harassment and intimidation including the possible threat of violence and has clearly had an adverse impact on both the morale and efficiency of your office and the Agency. You have been counseled by your supervisor about your disruptive behavior to no avail.

In your written and oral replies you do not acknowledge that the cited conversations, contacts, and events occurred. Moreover, you fail to accept responsibility for any type of misconduct or demonstrate any remorse or regret for your behavior. Instead, you maintain that all the employees who signed statements about your disruptive, intimidating and inappropriate behavior in the workplace either made things up or did so because you have stood against management's alleged agenda against you. Even your offer of participating in the Employee Assistance Program (EAP) rings hollow in so much as you indicate that counseling would help you learn how to manage the stress you have been placed under by management, rather than dealing with the behavior which led to the proposed removal. Your contentions and view of the facts are not credible in face of the evidence before me.

I have considered your thirty-seven (37) years of acceptable service; however in the context of the record as a whole, this does not mitigate the seriousness of your misconduct. Although your work history reflects a lack of prior disciplinary action, your behavior, as described in the proposed action, is disruptive, unprofessional, unacceptable and cannot be tolerated under any circumstances within the Agency and/or the Department. The pervasive nature of your misconduct and the detrimental effect it has had on the efficiency and morale of employees in several offices indicates that a lesser penalty is not sufficient in this case. This is particularly true given the concern raised by several employees regarding their physical safety in the office as a consequence of your behavior.

Based on the foregoing, it is my conclusion that you do not possess potential for rehabilitation and a lesser penalty will have no perceivable impact on your behavior. Therefore it is my decision to remove you from Federal employment effective July 31, 2009. This action will promote the efficiency of the Federal service.

You have the right to appeal this decision to the Merit Systems Protection Board (MSPB). You shall be deemed to have exercised your option when you timely initiate an appeal with the MSPB.

If you elect to appeal this decision to the MSPB, you must do so in writing, no more than 30 calendar days after the date on which your removal is effective. If, prior to your filing a formal appeal, you and the Agency mutually agree, in writing, to attempt to resolve this

matter through an alternative dispute resolution process, the 30-day period for filing an appeal will be extended an additional 30 days (for a total of 60 days). You should advise me as soon as possible if you are interested in exploring this option, but this should in no way be construed as a commitment on my part or the Agency to enter into such an agreement. An appeal to the MSPB must be delivered in person, by facsimile, or by certified mail to:

Regional Director

Merit Systems Protection Board

Washington Regional Office

1800 Diagonal Road

Alexandria, Virginia 22314

Regional Office Number: (703)756-6250

Fax Number: (703)756-7112

You may find the MSPB appeal form, regulations and an explanation of how your appeal must be filed and the procedures that will govern the processing appeal at [www.mspb.gov](http://www.mspb.gov).

If you feel that this action resulted from discrimination because of race, color, sex, age, religion, national origin, handicap, or reprisal for having filed or participated in previous complaints of discrimination, you may file an EEO complaint. You may not file both an EEO complaint and an MSPB appeal regarding this decision. For further information regarding the EEO complaint process, you may contact the Department of Labor Civil Rights Center at (202) 693-6500.

You should be aware that an allegation of discrimination in connection with a removal is a "mixed case" which can be raised either in connection with an appeal to the MSPB or in the EEO complaint process. However, a person may not initially file both an appeal to the MSPB and an EEO case on the same matter. The election to proceed either before the MSPB or in the EEO complaint process is determined by which proceeding was filed first. You do not make an election until you file an appeal with the MSPB or a formal EEO complaint. Contacting an EEO Counselor or filing an informal complaint with the Department of Labor, Civil Rights Center, does not prevent you from filing a mixed case appeal with the MSPB.

If there is anything in this letter concerning my decision, which you do not understand and wish to have explained, please contact Ms. Cecimil Maldonado at (202) 693-2469.