



# NATIONAL ENERGY TECHNOLOGY LABORATORY

Albany, OR • Morgantown, WV • Pittsburgh, PA



April 20, 2018



MEMORANDUM FOR: FRANKLIN SHAFFER  
RESEARCH GENERAL ENGINEER,  
ENERGY CONVERSION ENGINEERING

FROM: RONALD BREAUT *Ronald Breault*  
SUPERVISORY RESEARCH GENERAL ENGINEER  
ENERGY CONVERSION ENGINEERING

SUBJECT: Notice of Proposed Suspension

This is notice that I propose to suspend you for ten (10) work days from your position of Research General Engineer, GS-801-14. This proposed action is based on the following:

Charge 1: Failure to follow instruction

Specification 1: On January 12, 2018, when you left for work that day, a very cold winter day, you left a window in your office open. Over the long weekend, your actions caused the pipes to freeze and break water lines, causing considerable damage. It has been estimated that repairs caused by this damage have cost the agency approximately \$55,000. As a result, on January 17, 2018, I discussed the situation with you and made you aware of the significant damage that was caused by you leaving your window open and informed you that you must close your window each day when you leave for work. On April 5, 2018, you left your office window open again when you left for the day. I clearly communicated to you previously that you must close your window when you leave each workday and you failed to follow my instruction, which could lead to further damages and costly repairs.

Charge 2: Absent Without Leave (AWOL)

Specification 1: On April 4, 5, 6, 9, 10, 11, 12, 13 of 2018, you did not report to work, nor did you request leave approval from me for these dates, therefore I charged your timecard as AWOL for those unaccounted-for dates. I made numerous attempts during that timeframe to reach you via your personal cell phone as well as your work email, and did not receive any response from you.

In accordance with the guidance in *Douglas v. Veterans Administration*, 5 MSPR 280 (MSPB 1981), I have considered the following factors when assessing the proposed discipline:

The nature and seriousness of the offense and its relation to your duties, position, and responsibilities, including whether the offense was intentional, technical, or inadvertent, or was committed maliciously or for gain, or was frequently repeated.

Your actions are very serious offenses. As a result of leaving your window open in January, you were made aware that your actions caused significant damage and repair costs. You were even required to change offices while your damaged office was being repaired. In this knowledge, and even though you were specifically instructed to always close your window when you left for the day, you again left your window open on another occasion in April. Your actions could have caused further costly damages and repairs.

You were AWOL for eight days in April, which is also a very serious offense. You failed to report to work, did not request leave, and did not respond to my numerous attempts to contact you. This is especially serious given the duration of your unexcused absence.

Your job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position.

You are a GS-14 Research Engineer who analyzes solids flow behavior from experimental data that you are supposed to ensure is being taken. By not being at work and available to conduct your work, you are negatively impact the mission of the organization and should recognize the negative impact you are having by being AWOL. At your level, it is also imperative for you to follow instruction, and you have failed to do so by subjecting the agency to costly damages and repairs by repeatedly leaving your window open. Someone of your grade level and responsibility level should understand the importance of completing the mission requirements and of following instruction.

Your past disciplinary record.

When determining the proposed penalty, I have considered that you have no disciplinary record as a federal employee.

Your past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.

I note that you have been a federal employee for almost 32 years, and received a Meets Expectations rating for fiscal year 2017.

The effect of the offense upon your ability to perform at a satisfactory level and its effect upon supervisors' confidence in your work ability to perform assigned duties.

The AWOL offenses remove my confidence that you have been working as there is no work product to indicate that you have been producing. In addition, your failure to adhere to basic instruction causes me to seriously question your ability to perform these and other, more sophisticated tasks.

Consistency of the penalty with those imposed upon other employees for the same of similar offense.

A search through the records maintained at NETL indicates consistency for the AWOL charges. The penalty for the failing to follow instruction is reasonable considering the damages that could potentially have been done as evidenced by the actual damage you caused in January. The penalty is also consistent with prior cases.

Consistency of the penalty with any applicable agency table of penalties.

I have considered the Guide Table of Penalties and Offenses in DOE Order 333.1, Administering Work Force Discipline, while determining this proposed penalty and find that your offenses warrant such corrective action. The proposed penalty is within the range of penalties contained in the Order for the charges against you. I considered lesser actions, including oral counseling, reprimands and suspensions of a shorter duration. But given your position and the seriousness of the offenses, I have concluded that a proposed 10-day suspension is appropriate. It also makes clear to you that any future infraction/misconduct from you of any nature will warrant a deeper level of proposed penalty. Based on this, I have concluded that this proposed ten (10) work day suspension is the least penalty likely to correct this type of conduct from repeating itself in the future and is consistent with the agency table of penalties.

Notoriety of the offense or its impact upon the reputation of the agency.

The damages caused in January were widely known and many were upset that they had to be relocated while repairs were made. Therefore, when you committed the same act in April, just 4 months later, your actions were noted by many in the Agency, including having been reported by the Laboratory Operations Center Site Manager. Further, employees being AWOL is also a very negative reflection of the agency and cannot be tolerated.

The clarity with which you were on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question.

I informed you in January that you must close your window when you leave for the day. You and your co-workers have been occupying different offices for the duration of the repair process. You are also aware of the process to request leave and you failed to do so, resulting in AWOL charges.

The potential for your rehabilitation.

I am concerned that your repeat action in failing to close the window exhibits a reluctance to comply with this requirement. I also concerned that you may repeat the action of being absent without authorization.

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.

There were no mitigating circumstances of this nature surrounding the offenses you committed that I am aware of, except for generally being aware that you have some medical issues with your back, and you felt that other employees were looking at you after the first window incident in January. However, I am unaware of any reasons that would prevent you for closing your window as instructed nor following proper leave requesting procedures.

Adequacy and effectiveness of alternative sanctions to deter such conduct in the future by you or others.

I believe that this suspension will be effective. You were AWOL for eight days and failed to follow my instruction. I believe that one suspension day for each day you were AWOL will be effective in deterring future behavior, along with two suspension days for failing to follow instruction.

You and/or your representative are entitled to review the documentation relied upon to support this proposal. You have the right to reply to this notice orally, in writing or both to David Berry within fifteen (15) calendar days from the receipt of this notice, and if desired, furnish affidavits or other documentary evidence in support of your reply, showing why this notice is inaccurate and any other reasons why your proposed suspension should not be effected. You have the right to represent yourself, be represented by an attorney, or other representative of your choosing in preparing your response. Any reply that you make will be considered in reaching a final decision. You will be granted, upon request, a reasonable period of official time to prepare and present your written reply or other defense. You must make the request for official time in writing to me. This is a proposed action. As soon as possible after your reply is received and not less than thirty (30) calendar days from the date of this letter, a written decision will be issued to you.

The Employee Assistance Program (EAP) is available for your use if you are experiencing any problems which may be affecting your conduct. You may contact them by calling 1-800-222-0364, seven (7) days a week, twenty-four (24) hours a day.

If you do not understand the reasons for this proposal, you may contact me for further explanation. If you have technical questions regarding the procedures in this action, or wish to review the material used to take these actions, you should contact the Employee and Labor Relations Specialist at (412) 386-7548

Receipt Acknowledged:

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Franklin Shaffer

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Date