

HQ MDNG Supplement 1 to
NGB TPR 752, and
NGB TPR 752-1

Conduct Management

Discipline and Adverse Action

and

Adverse Action Appeals and the National Guard Hearing Examiner Program

HQ, Maryland National Guard
29th Division Street
Baltimore, Maryland 21201
August 31, 2016

UNCLASSIFIED

SUMMARY of CHANGE

HQ MDNG Supplement 1 to NGB TPR 752, and NGB TPR 752-1
Discipline and Adverse Action, and Adverse Action Appeals and the National Guard Hearing Examiner
Program
August 31, 2016

- o This publication **replaces** MDNG TPR 752, dated 30 July 1990

- o This is the first HQ MDNG Supplement to NGB TPR 752 and NGB TPR 752-1. This supplement provides local guidance and establishes standardized procedures which will be followed when taking adverse actions and making adverse action appeals within the Maryland National Guard Technician Program.

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29th Division Street
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August 31, 2016

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NGB TPR 752, and
NGB TPR 752-1**

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**Discipline and Adverse Action and
Adverse Action Appeals and the National Guard Hearing Examiner Program**

By Order of the Adjutant
General:

LINDA L. SINGH
Major General
The Adjutant General

Official:

CHRISTOPER J. COLE
COL, MDARNG
Human Resources Officer

History. This document is the first supplement and codifies policies and procedures.

Summary. This supplement compliments NGB Technician Personnel Regulations 752 and 752-1 by identifying the specific

policies and procedures to be used by the MDNG in cases of discipline, adverse action and adverse appeals.

Applicability. This supplement applies to all MDNG Technicians, and their supervisors regardless of their status (technician, AGR or state employee)

Proponent and exception authority. The proponent for this supplement is the MDNG Human Resources Office. The proponent has the authority to approve exceptions or waivers to this supplement that are consistent with controlling law and regulations. The proponent may not

delegate this authority. All requests for exceptions or waivers will be endorsed by the first O6 in the requester's chain of command/supervision.

Suggested improvements. Users are invited to submit comments and suggested improvements directly to the MDNG Labor Relations Specialist, NGMD-AG-HRO, Baltimore, MD 21201.

Distribution. This supplement is available in electronic media on the HRO website located at <http://www.md.ngb.army.mil/> and is intended for the MDNG.

Chapter 1

Discipline and Adverse Action

1-1. Procedures

All MDNG adverse actions will be in accordance with NGB TPR 752 and this supplement. Adverse actions do not include Trial/Probationary technician removals. Adverse actions are a two-step process: notification to the technician that adverse action is proposed (Proposed Action Letter), followed by the decision to either implement an adverse action as proposed, or the decision to downgrade the proposed adverse action, or the decision to not take adverse action (Original Decision Letter).

1-2. Proposed Action Letter (PAL)

- a. The supervisor will determine, by a preponderance of the evidence, if the technician committed an offense.
- b. Supervisor will consider “Douglas Factors” and determine if there are any mitigating circumstances or prior disciplinary/adverse actions in effect at the time of most recent misconduct. (see NGB TPR 752, Appendix F, The “Douglas Factors”)
- c. Supervisor should consult with the deciding official early in this process on the type and severity of the proposed adverse action. This consultation should not include the detailed evidence behind the proposed adverse action. The deciding official will be provided all detailed evidence once the technician is afforded the opportunity to rebut.
- d. Supervisor will draft a PAL and send to HRO Labor Relations Specialist (LRS) for review. A sample PAL is provided at Appendix A.
- e. Final HRO-reviewed PAL is signed by the supervisor and delivered to the technician for acknowledgement of receipt.
- f. A copy of the PAL signed by both the supervisor and technician, along with any reports of investigation or other documents relied upon in determining to propose adverse action will be provided to LRS.

1-3. Original Decision Letter (ODL)

- a. The deciding official shall be at minimum either an O6 or directorate/group level officer.
- b. The deciding official, in coordination with the supervisor, shall draft the ODL after considering any technician rebuttals, or after the technician rebuttal period has expired if no rebuttal is provided. A sample ODL is provided at Appendix B.
- c. The deciding official will provide a copy of the draft ODL to LRS for review.
- d. Final HRO-reviewed ODL is signed by the deciding official and delivered to the technician for acknowledgement of receipt with signature.
- e. A copy of the ODL signed by both the deciding official and technician, along with any other documents relied upon in determining the Original Decision, including any technician rebuttals, will be provided to LRS.

Chapter 2

Adverse Action Appeals

2-1. Adverse Action Appeals

Technicians may appeal adverse actions. The ODL will provide the technician instructions on how to request an appeal. There are two types of appeal; an Appellate Review or an Administrative Hearing. It is the technician's prerogative to decide which type of appeal to file, but the technician may only request one type of appeal.

2-2. Appellate Review

The appellate review is conducted by TAG. Follow the instructions in TPR 752-1, chapter 2-3 on the conduct of an appellate review.

2-3. Administrative Hearings

a. An administrative hearing is a more complex type of appeal since it requires both an out-of-state NGB Hearing Examiner to hear the appeal, and a stenographer to transcribe the hearing's proceedings. Follow the instructions in TPR 752-1, chapter 3 and this supplement on the conduct of an administrative hearing. All financial costs and contracting associated with the Administrative Hearing shall be borne by the requesting technician's service component. Costs typically include travel and per diem for the Hearing Examiner, and a stenographer.

b. Preparation for the hearing - The following tasks will be accomplished in preparation for the hearing:

(1). HRO

(a). Provide written notification to the technician or their representative of the NGB hearing examiner's selection.

(b). Establish a mutually acceptable date, time and place for the pre-hearing/hearing and ensure all parties are informed in writing or by email.

(c). Schedule the location for the pre-hearing/hearing.

(d). Ensure all parties have good contact information for all other parties in the appeal.

(2). JAG

(a). Provide the case file to all parties at least 10 calendar days in advance of the pre-hearing and hearing.

(b). Ensure both parties have exchanged proposed witness list and resolve any issues regarding witness availability, unnecessary duplication, or relevancy.

(c). Ensure the attendance of all witnesses that are reasonably available and relevant.

(d). Provide arrangements such as speaker telephones, video tele-conferences, or affidavit if a witness is not reasonably available but their testimony is important to the case.

(e). Resolve any reasonable and relevant requests by the technician or their representative for documents or tangible evidence in control of the State.

(3). Service Component of the technician.

(a). Contract and pay for a stenographer to provide a verbatim transcript for both the pre-hearing and hearing.

(b). Ensure funds are available to the Hearing Examiner for travel costs and per diem.

2-3. Technician Representatives

Technicians under adverse action may elect to have an individual represent them. Costs for such representatives are the responsibility of the technician, and the representative cannot be a member of the Human Resources Office. Technicians within bargaining units will use the appeal procedures found in their collective bargaining agreement (CBA). Representatives will be designated in writing (see appendix G, TPR 752).

Appendix A
Sample Proposed Action Letter

MEMORANDUM FOR (Rank) (Last name, first name), (pay grade), (position title), (work location and address)

SUBJECT: Proposed Action Letter

1. This letter is notification that I propose to **(suspend and/or change to lower grade or remove)** you from your position as **(position title)** as a result of **(state offense/s)**. **(If for suspension, state the length of suspension) (If for removal, state “This letter constitutes your 30 day notice of removal.”)**
2. Specifically, on XX Jan 20XX **(Give a complete explanation of the cause/offense, including the who, what, when and where) (State the rationale for the penalty selection).**
3. You may review and/or make copies of the material relied upon to support this proposed action by contacting the undersigned. You will be allowed a reasonable amount of duty time to review the material relied upon to support this action, to secure affidavits, and to prepare a reply to this notice. **(If other parties are mentioned in the explanation of the cause/offense, or otherwise applicable, then include the following statement, “You may arrange interviews on your own or with my assistance with any parties listed above or any other employees or military members who may have relevant information should they agree to be interviewed.”)**. You should arrange with me for the use of duty time. I am prepared to give you further explanation if you do not understand the reasons for this proposed action.
4. You may reply to this notice orally, in writing, or by both methods to **(Name, address and contact information of Deciding Official)**, who will receive your reply(s) and will issue an original decision letter. You may submit affidavits in support of your reply. You will be allowed ten (10) calendar days from the date on which you receive this notice to submit your reply or to submit a request stating your reasons for desiring more time. The original decision maker may grant all, a portion, or none of this extension request. Full consideration will be given to any reply you submit.
5. The Human Resource Office (HRO) has been consulted on the issuance of this letter and **(Name)**, Labor Relations Specialist, of the HRO is available to answer your procedural questions. He may be contacted by phone at XXX-XXX-XXXX or by email at xxxxxx.x.xxxx@xxxx.xxx. This HRO member is not your representative.
6. The Deciding Official, COL Xxxxxxxxxx, will render an original decision to this proposed action at the earliest practical date after receiving your reply, or after the reply period has ended. This original decision, if upholding of this proposal, will state the approved adverse action, if any, along with the effective date(s) of the adverse action.

SIGNATURE BLOCK

I, XXXXXXXX X. XXXXX, have received this letter of proposed action this _____ day of _____ 20XX. My signing below is not an agreement with the content, only acknowledgement that I have received a copy.

XXXXXXXX X. XXXXX

Appendix B
Sample Original Decision Letter

MEMORANDUM FOR (Rank) (Last name, first name), (pay grade), (position title), (work location and address)

SUBJECT: Original Decision Letter

1. On XX Jan 20XX, (supervisor's name) proposed to (suspend you without pay for a period of xx days xx hours/remove you) from your technician position as (position title) as a result of (state the offense from NGB TPR 752, Table D-1).
2. In accordance with National Guard Bureau Technician Personnel Regulation 752, I am the Deciding Official for this proposed adverse action. As deciding official, I am required to issue an original decision for this proposed adverse action.
3. I have considered your reply(s) of date(s). In your reply(s) you raised the following points or issues (summarize the substance of the technician reply(s)). (If no reply is received, state this fact).
4. After a careful review of all documentation, testimony, and facts presented to me, I find that (there is a preponderance of evidence that you did in fact commit the offenses outlined in the proposed adverse action. I have concluded that your (suspension or removal) is for just cause and will promote the efficiency of the service. Therefore, I sustain the (proposed suspension action) or (action to terminate your MDARNG/MDANG technician employment) or (there is cause for taking adverse action but with some lesser specified penalty) or (not cause for taking adverse action)).
5. (You will be removed from your technician position effective XX Feb 20XX.) (You will be suspended for twenty hours (20) from your technician employment effective XX Feb 20XX.)
6. In coming to my decision, I fully considered the appropriate Douglas Factors addressed by the Merit Systems Protection Board in Douglas v. Veterans Administration.
7. The Human Resource Office (HRO) has been consulted on the issuance of this letter and (Name), Labor Relations Specialist, of the HRO is available to answer your procedural

questions on your appeal rights. He may be contacted at XXX-XXX-XXXX. This HRO member is not your representative.

8. In accordance with National Guard Bureau Technician Personnel Regulation 752-1, you have the right to appeal this original decision. You may request either an appellate review or an administrative hearing. You may not request both methods of appeal. The appellate review is accomplished by the State Adjutant General without the involvement of a NGB hearing examiner. This appellate review involves a review by the State Adjutant General of all pertinent records including the reply(s) of the technician and any documents submitted with the appeal. In an administrative hearing, a NGB hearing examiner from another state will gather all available and relevant facts through the administrative hearing process. After the hearing process, the NGB hearing examiner will issue a report of findings and recommendations to the State Adjutant General. In either method of appeal, the final decision on appeal is issued by the State Adjutant General. You can appeal by sending a written notice to the HRO specifying which method of appeal you request. This request must be received within 20 calendar days of the delivery date of this letter or e-mailed to the HRO no later than 20 calendar days from the delivery date of this letter. If an appeal request cannot be made within the 20 calendar days, a request to extend the time for making an appeal, along with the reason(s) for the request, can be made through the HRO to the State Adjutant General who may grant any extension warranted as the State Adjutant General deems appropriate. If an appeal is not made, or is not made in a timely manner, the original decision letter will become final.

SIGNATURE BLOCK

Distribution:
Technician
Technician (OPF)
(Supervisor who issued Proposed Action Letter)

I, XXXXXXXX X. XXXXX, have received this original decision letter this _____ day of _____ 20XX. My signing below is not an agreement with the content, only acknowledgement that I have received a copy.

XXXXXXXX X. XXXXX