

DOUGLAS FACTORS FOR MITIGATION OF SUSPENSIONS OF MORE THAN 14
DAYS OR TERMINATION FOR MISCONDUCT

Below are the twelve Douglas Factors from the seminal 1981 Merit Systems Protection Board (MSPB) case – *Curtis Douglas vs. Veterans Administration*, 5 MSPR 280 (1981) – that an MSPB administrative judge will analyze to see if management abused its discretion in determining an adverse action (more than 14-day suspension or termination) penalty for employee misconduct. The AJ analyzes these twelve Douglas Factors for aggravating or mitigating circumstances to assess if management determined an appropriate penalty for the employee’s misconduct. If the AJ finds that management inappropriately misapplied the Douglas Factors to the facts of the employee’s charged misconduct or omitted relevant mitigating Douglas Factors, he or she can mitigate or set aside the penalty given to the employee. The factors are the following:

1. The nature and seriousness of the offense, and its relationship 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;
2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position.
3. The employee's disciplinary record (within the past 3 years, or longer in more serious cases).
4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the supervisor's confidence in the employee's ability to perform assigned duties;
6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;¹
7. Consistency of the penalty with any applicable agency table of penalties;

¹ New MSPB case law has established that the similarly-situated employees for comparison of the penalty given to the charged employee are no longer limited to employees in the same work unit, with the same supervisor, proposing or deciding officials and can be a broader group of bargaining-unit employees throughout the Agency. An Agency has to justify any differences in penalties given to similarly-situated employees for similar misconduct throughout the Agency. See *Lewis v. Department of Veterans Affairs*, AT-0752-08-0747-B-1 (MSPB May 28, 2010); *Williams v. Social Security Administration*, 586 F.3d 1365 (Fed. Cir. 2009).

8. The notoriety of the offense or its impact upon the reputation of the Agency;
9. 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;
10. Potential for the employee's rehabilitation;
11. 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; and
12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.