

## SEPARATION PROCEDURES FOR TITLE 38 DUE TO REASONS OF PRE-EMPLOYMENT FITNESS

1. **PURPOSE.** This notice contains procedures to be used to separate health care employees appointed under [38 U.S.C. §§ 7306, 7401\(1\)](#), or part-time registered nurses or advanced practice registered nurse (APRNs), e.g., certified nurse practitioner (CNP), clinical nurse specialist (CNS), certified registered nurse anesthetists (CRNAs), certified nurse midwife (CNM), appointed under [38 U.S.C. § 7405\(a\)\(1\)\(A\)](#) for pre-employment fitness reasons unknown to VA officials at the time of appointment, i.e., pre-employment misconduct which is judged to make the employee unsuitable for employment.
2. **POLICY.** The procedures outlined in this notice replace the provisions outlined in VA Handbook 5021, Part VI, paragraph 11.
3. **AUTHORITY.**
  - a. [38 U.S.C. § 7421](#).
  - b. [VA Directive and Handbook 5001, System of VA Human Resources Management Directives and Handbooks General Introduction and Administration](#).
4. **DEFINITIONS.** For this notice, the following terms apply:
  - a. **Business Days.** Weekdays, which are Monday through Friday, except when such a day is designated as a Federal holiday by the Office of Personnel Management, or the employee's assigned facility is closed for regular business, e.g., inclement weather.
  - b. **Deciding Official.** The management official designated to make a decision regarding the separation of an employee. (See [VA Handbook 5021, Part II, Chapter 2 and Appendix B](#).)
  - c. **Proposing Official.** The management official who issues a notice of proposed disciplinary or major adverse action, e.g., proposed reprimand, any suspension, removal, reduction in grade or basic pay. (See [VA Handbook 5021, Part II, Chapter 2 and Appendix B](#).)
5. **GENERAL.**
  - a. Criteria contained in [5 C.F.R. Part 731](#) should be used in determining if a particular act constitutes pre-employment misconduct. (The procedures in 5 C.F.R. Part 731 for taking an action for reasons of pre-employment fitness are not applicable, just the criteria. Use the procedures outlined in this Notice.)

- b. The procedures in this Notice do not apply to title 38 employees serving a probationary period and are not applicable to an employee's conduct, performance or fitness matters arising after appointment as a VA employee.

## 6. PROCEDURES.

- a. **Notification.** The proposing official, who is the same official who can propose a major adverse action, will give a written notice with the following information to the employee:
  - (1) Notice of the pre-employment fitness allegation(s).
  - (2) A statement that separation may result if the allegations are sustained.
  - (3) A statement that the employee may respond to the allegations orally and/or in writing to the deciding official.
  - (4) A statement that the employee may have a representative.
  - (5) A statement that if the employee chooses to respond orally, the employee must notify the official designated in the notice, within 3 business days of receipt of the notice for a meeting to be scheduled. The employee will be given 7 business days in which to issue a written reply, regardless of whether an oral reply is requested or not.
- b. **Employee Reply.** The employee will be given 3 business days from receipt of the notice to request a meeting with the deciding official and 7 business days from receipt of the notice to submit a written reply. The deciding official will generally meet with the employee within 7 business days after the employee requests a meeting.
- c. **Reaching a Decision.** The deciding official will review the evidence, including any submitted by the employee. If the pre-employment fitness allegation(s) are supported, the deciding official will determine whether the employee should be separated. The decision will be based on 5 C.F.R. Part 731, and more generally, the nature of the pre-employment misconduct and the implications it may have for the individual's conduct and performance as a VA employee.
- d. **Decision.** A decision to separate will generally be affected upon the date in which the decision is issued but no later than 5 calendar days after issuance of the decision.
- e. **Appeal.** There is no further right to appeal or review.

7. **RESPONSIBLE OFFICE.** Office of the Chief Human Capital Officer (05), [Employee Relations & Performance Management Service \(051\)](#).
8. **RESCISSION.** This notice will be rescinded and guidance incorporated into VA Handbook 5021, Employee/Management Relations, no later than one year after the date of publication.

**CERTIFIED BY:**

**BY DIRECTION OF THE SECRETARY OF  
VETERANS AFFAIRS:**

/s/  
Guy T. Kiyokawa  
Assistant Secretary for  
Enterprise Integration

/s/  
Gina M. Grosso  
Assistant Secretary for  
Human Resources and Administration/  
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