

MEMORANDUM OF UNDERSTANDING BETWEEN
THE SEAFARERS INTERNATIONAL UNION ATLANTIC, GULF, LAKES AND INLAND
WATERS DISTRICT, NATIONAL MARITIME UNION (SIU/NMU)

AND

MILITARY SEALIFT FLEET SUPPORT COMMAND (MSFSC)

This MOU dated October 1, 2010 completes the Parties' negotiations regarding CMPI 750.

Section 1. Definitions.

- A. **Absence Without Leave (AWOL):** Absence without prior approval, a nonpay status resulting from a Command determination that it will not grant any type of leave (not even leave without pay) for a period of absence for which the employee did not obtain advanced authorization or for which a request for leave has been denied.
- B. **Adverse action:** A removal; suspension for more than 14 days, including an indefinite suspension; a reduction in grade or pay; or a furlough of 30 days or less. See also appealable action.
- C. **Appealable action:** A removal; suspension for more than 14 days, including an indefinite suspension; reduction in grade or pay; or furlough of 30 days or less. See also adverse action.
- D. **Appropriate penalty/reasonable remedy:** These terms are interchangeably used to refer to the corrective action determined to be appropriate after consideration of the facts of the case, the CIVMAR's response, and relevant "Douglas Factors."
- E. **CIVMAR:** Civil Service Mariner.
- F. **Day:** Calendar day.
- G. **Desertion:** Willful abandonment of a ship (without authority) and with the intention of not returning.
- H. **Disciplinary action:** A logging, reprimand, conditional suspension, or suspension from duty and pay status for 14 days or less.

- I. **Drugs:** A controlled substance included in Schedules I-V established by section 202 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (84 Stat 1256) as updated and republished under the provisions of that Act.
- J. **Drug paraphernalia:** Equipment, products, or materials used, intended for use, or designed for use in injecting, ingesting, or otherwise introducing drugs into the human body in violation of the law.
- K. **Grievable action:** Letter of reprimand, Logging, Conditional Suspension, and Suspension of 14 days or less. Other actions may also be grievable, if not otherwise excluded under a negotiated grievance procedure or administrative grievance procedure, as applicable.
- L. **Grievance:** A complaint by a CIVMAR concerning any matter relating to the employment of the CIVMAR (5 USC 7103).
- M. **Harmful error:** Error by the Command in the application of its procedures that is likely to have caused the Command to reach a conclusion different from the one it would have reached in the absence or cure of the error. The burden is upon the appellant to show that the error was harmful, i.e., that it caused substantial harm or prejudice to his or her rights. This standard applies to adverse actions that are appealable to the Merit Systems Protection Board. See 5 C.F.R. § 1201.56.
- N. **Illegal (or unlawful) use or possession of a drug:** Use or possession of a drug without a valid medical prescription for the use of that drug or controlled substance, for which use or possession violates law or regulation.
- O. **Improper importation of goods:** The importation into any country, knowingly and willfully, with intent to defraud, or any merchandise that should be invoiced and passed through customs, without making declaration to the proper authorities. An importation takes place whenever merchandise is introduced within the territorial waters of a country with intent to avoid customs, laws, and regulations, avoid payment of duty, or dispose of prohibited goods. The act of improper importation of goods is complete once merchandise is removed from the ship within the territorial limits of any country with intent to evade customs, laws, and regulations of that country.
- P. **Letter of Caution:** A non-disciplinary written notification issued by a superior to a CIVMAR concerning unacceptable conduct and/or performance, and warning the CIVMAR that a disciplinary action may be imposed unless the conduct and/or performance improves.

- Q. **Letter of Reprimand:** A written disciplinary action issued to a CIVMAR based on specific unacceptable conduct and/or performance.
- R. **Letter of Requirement:** A non-disciplinary written notification (order) issued to a CIVMAR concerning conduct and/or performance deficiencies, such as sick leave abuse or tardiness, which sets forth requirements and procedures to be followed by the CIVMAR to avoid a future disciplinary action for similar deficient conduct and/or performance.
- S. **Mutual Consent Resignation:** The resignation of a CIVMAR which is accepted while the CIVMAR is serving on voyage.
- T. **Offense:** An act in violation of standards of conduct or performance established by COMSC or other competent authority.
- U. **Officer-in-Charge (OIC):** The CIVMAR licensed officer who has command and/or responsibility for a ship and its crew, when a Master is not assigned or incapacitated.
- V. **Penalty:** See "appropriate penalty/reasonable remedy."
- W. **Preponderance of the Evidence:** The degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue. This standard applies to adverse actions that are appealable to the Merit Systems Protection Board. See 5 C.F.R. § 1201.56.
- X. **Remedy:** See "appropriate penalty/reasonable remedy."
- Y. **Removal:** Involuntary separation of a CIVMAR from Federal service except when taken as a reduction in-force action.
- Z. **Safe Harbor:** A provision of the Drug Free Workplace Program (DFWP) which gives a CIVMAR a one-time opportunity to voluntarily identify himself or herself as a user of illegal drugs, to willingly undertake counseling and, as necessary, rehabilitation. Safe harbor insulates the CIVMAR from discipline for these admitted, but otherwise unknown, past acts of illegal drug use. It does not protect the CIVMAR from discipline for admitting to drug trafficking or other drug-related offenses. Also, it does not insulate the CIVMAR from removal based on loss of security clearance.
- AA. **Suspension:** Placing a CIVMAR in a temporary status without duties and pay for disciplinary reasons, including pending inquiry. Also see "indefinite suspension."

- BB. **Termination:** The term used to document different types of separations, both CIVMAR and Command initiated, some for disciplinary reasons.
- CC. **Trafficking (drugs):** Unlawful manufacture, distribution, sale or transfer of drugs and/or the unlawful possession with the intent to distribute, sell, or transfer.
- DD. **Trial period:** A CIVMAR serving in an Excepted Appointment who has not completed the 12 months creditable service requirement.

Section 2. Clarification of Section 2-7.a. Employees.

A CIVMAR's contribution to MSC's operation and missions are highly valued. As a result CIVMAR conduct during work hours (and in certain circumstances away from work) may impact the efficiency of MSC's operations. CIVMARs will conduct themselves in a manner that does not adversely reflect upon MSFSC, MSC and the Department of the Navy.

Section 3. Clarification of Section 3-1.b. Counseling, Coaching, and other Non-Disciplinary Tools.

Letters of Caution and Letters of Requirement are *not counted as prior offenses*. However, should the CIVMAR subsequently commit an offense(s), MSFSC may use these letters to determine an appropriate remedy.

Section 4. Clarification of Section 3-8.a. Factors to be Considered.

When rendering a decision, the Deciding Official will consider the timeframe in which prior misconduct occurred, in accordance with the Douglas Factors. Generally, the deciding official may use a five-year timeframe to evaluate the relevance of the prior offense(s) in disciplinary cases where there is no reckoning period. The timeframe appropriate for each decision, however, will be decided on a case-by-case basis.

Section 5. Supplement of Section 3-8.f. Reasonable Accommodation.

Under federal disability laws CIVMARs who may be experiencing performance or behavior problems that they believe are due to a disability may be entitled to certain protections. CIVMARs who believe that they may be experiencing such problems are encouraged to seek counseling through Civilian Employee Assistance Program (CEAP) or contact the MSFSC Equal Employment Opportunity (EEO) Department for questions regarding reasonable accommodation. A CIVMAR may be entitled to a reasonable accommodation but such accommodation may not shield a CIVMAR from disciplinary action.

Section 6. Clarification of Section 5-1. General.

Grievances and appeals procedures affecting CIVMARs contesting disciplinary or adverse actions are dependent upon several factors. These factors include, but are not limited to, the nature and type of disciplinary or adverse action taken and the CIVMAR's employment status (e.g. whether the CIVMAR is in a trial period or has veterans preference). CIVMAR rights and responsibilities are also noted in the applicable collective bargaining agreements or the administrative grievance procedure.

Each case is carefully reviewed by the MSFSC officials and/or shipboard supervisor(s). MSFSC officials and/or shipboard supervisor(s) are responsible for informing each CIVMAR about his or her grievance and appeal rights, entitlements, procedures and time limits which apply to the grievance and appeals process in accordance with the references in CMPI 750 Section 1-2, and the applicable collective bargaining agreements or the administrative grievance procedure.

Section 7. Clarification of Reckoning Periods.

The following reckoning periods will apply:

- A. Oral Admonishment – up to 1 year;
- B. Letters of Reprimand – up to 2 years;
- C. Conditional Suspension – up to 3 years;
- D. Logging – up to 3 years;
- E. All other actions – no reckoning period.

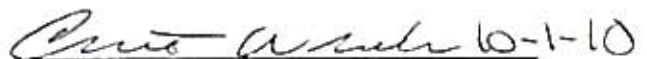
Section 8. Consideration of a CIVMAR's disciplinary record for merit promotion purposes will be addressed in CMPI 330.

 10/1/10

Kathleen Giacolone - MSFSC
Chief Negotiator

 10-1-10

Andrew Lefebvre – MSC

 10-1-10

Chester Wheeler
Asst. Vice-President
Government Services Division
Seafarers International Union
AGLIWD/NMU