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INFORMATION PAPER

25 February 2002

SUBJECT: Disciplinary Actions - USPS vs Gregory

PURPOSE: To provide recent information on the reasonableness of a penalty based on prior disciplinary actions.

BACKGROUND:

- When an employing agency's disciplinary action is challenged before the Board, the agency bears the burden of proving its charge by a preponderance of the evidence. This requires proving not only that the misconduct actually occurred, but also that the penalty assessed was **reasonable** in relation to it. Douglas v. Veterans Admin., 5 M.S.P.B. 313, 333-334 (1981)
- The U.S. Circuit Court of Appeals for the Federal Circuit previously ruled that prior disciplinary actions that are subject to current challenge many not be used to support the **reasonableness** of a penalty. Gregory v. USPS, No. 00-3123 (Fed. Cir. May 15, 2000)
- Government agencies including the Department of Army disagreed with this ruling as challenges to disciplinary actions via grievances or appeals can take a long period of time.

NEW RULING OF LAW:

- The U.S. Supreme Court reversed the Federal Circuit and held that the MSPB may review independently prior disciplinary actions pending in grievance proceedings when reviewing termination and other serious disciplinary actions. USPS v. Gregory, No. 00-758 (U.S. Nov 13, 2001).
- This means that deciding officials reviewing disciplinary actions can review prior disciplinary actions even if the disciplinary actions have not been fully adjudicated.

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