

Suitability Executive Agent Programs

CHARGE-BY-CHARGE ANALYSIS MEMORANDUM

Suitability Action Appeals | 5 CFR Part 731, Subpart E, § 731.503(c)(3) | Effective September 2, 2026

CASE INFORMATION

Appellant Name

OPM Appeal Case Number

Note: Use the case number from OPM's acknowledgment letter — the appeal case number, not the underlying investigation number.

Position / Title

Agency / Component

Burden of Proof: Once the appellant establishes timeliness and jurisdiction, the responsible agency bears the burden to establish, by a preponderance of the evidence, the charge or charges supporting the unfavorable suitability determination and the substantive propriety of the suitability action taken (5 CFR § 731.501(b)(2)). That allocation does not shift to the Agency the appellant's own burden to demonstrate timeliness, jurisdiction, or any claim of improper procedure (5 CFR § 731.501(b)(1)). OPM's deciding official must make findings on each material charge, specification, and suitability factor relied upon (5 CFR § 731.505(f)(2)). If this analysis omits a charge or factor cited in the final decision letter, OPM may not be able to sustain it.

INSTRUCTIONS FOR USE

A charge-by-charge analysis is not required in every agency response file. OPM may request that the agency complete one, or the agency may choose to submit one voluntarily on its own initiative. These instructions govern assembly of the complete analysis; the rules for drafting an individual charge appear on the **Charge Analysis Attachment** page. Complete one Charge Analysis Attachment, using the template on the following page, for each charge cited in the final decision letter. Number the attachments sequentially — for example, “Charge 1 of 3,” “Charge 2 of 3,” “Charge 3 of 3.” File the completed attachments together behind this cover page in Tab 4 of the agency response file.

Each attachment must be grounded in the documentary record. Do not include facts or arguments not supported by materials already in the file. State each charge and specification exactly as written in the final decision letter — no paraphrasing. Cite supporting documents by tab and page number throughout (e.g., “Tab 3a, p. 12”). Italic bracketed text [like this] is guidance — delete it before submitting.

If there are two or more charges, complete Section VIII (Cumulative Basis for Action) at the end of the final charge attachment. An agency that uses its own format must include the information on this template. Questions about this form or the appeals process may be directed to SuitEA Appeals at SuitEAAppeals@opm.gov.

PREPARER'S CERTIFICATION

I certify that this charge-by-charge analysis is based solely on the documentary record included in the agency response file and that, to the best of my knowledge and belief, the factual statements herein are accurate and complete. I am an authorized agency representative or have been authorized by an authorized agency representative to prepare this analysis. I understand that a willfully false, fictitious, or fraudulent statement in this certification may subject me and the Agency to criminal penalties under 18 U.S.C. § 1001.

Complete the following only if the preparer is not the authorized agency representative designated in Tab 1. The preparer need not be that representative — for example, the representative may be an attorney in the Office of General Counsel while the analysis is prepared by an adjudications office more familiar with the basis for the decision.

Authorized By (authorized agency representative approving the preparer):

Name / Title: _____ Office / Component: _____

Date of Authorization: _____ Documentation of authorization at Tab _____, p. _____.

Signature

Printed Name

Title / Position

Agency / Component

Date

Charge Analysis Attachment

- Complete one copy of this attachment for each charge, numbered sequentially in the heading below. See the cover page for filing instructions and for when to complete Section VIII.
- Copy each charge and specification word for word from the final decision letter. Do not paraphrase, condense, or reword.
- Write only what the record supports. Every fact and argument must come from a document already in the agency response file — do not add new information here.
- Cite a tab and page number for every document referenced — for example, “Tab 3a, p. 12.”

CHARGE ____ OF ____

Charge: [state exactly as written in the final decision letter]

Note: A “charge” is the formal citation of the suitability factor — e.g., “Misconduct or Negligence in Employment.” Copy verbatim as it was presented to the appellant in the final decision letter.

Suitability Factor(s) Under 5 CFR § 731.202(b): [List Factor]

Note: The ten factors are: (1) Misconduct or Negligence in Employment; (2) Criminal Conduct; (3) Material, Intentional False Statement, or Deception or Fraud in Examination or Appointment [OPM only]; (4) Dishonest Conduct; (5) Failure to Comply with Financial Obligations or Generally Applicable Civil Legal Obligations, such as timely filing of tax returns; (6) Excessive Alcohol Use Without Evidence of Rehabilitation; (7) Illegal Use of Narcotics, Drugs, or Other Controlled Substances Without Evidence of Rehabilitation; (8) Knowing and Willful Engagement in Acts or Activities Designed to Overthrow the U.S. Government by Force [OPM only]; (9) Violent Conduct; and (10) Any Statutory or Regulatory Bar [agencies in applicant and appointee cases only]. OPM may act on any factor in any case. Agencies must refer to OPM any case resting on Factor 3 or Factor 8, and any conduct that may warrant a Government-wide debarment. If this charge rests on a referred factor, state the date of the referral and cite the referral documentation by tab and page.

I. SPECIFICATION(S)

Specifications

State the specific factual allegation. Include the act or omission, dates, locations, and details connecting the conduct to the appellant. Each separate act or incident should be its own numbered specification. Copy specifications verbatim from the final decision letter. Add additional specifications using the same format.

Note: List all specifications under this charge before moving to Section II. A charge stands or falls on its specifications. If the Agency no longer relies on a specification cited in the final decision letter, or the record does not support one, say so here and explain the effect on the charge — do not simply omit it. OPM must make findings on each material charge and specification, and where fewer than all are sustained, OPM determines whether the sustained grounds still support the action taken (5 CFR § 731.505(f)(2)).

II. STATEMENT OF FACTS

Summarize the factual record in narrative form: what happened, when, how the Agency learned of it, what investigation was conducted, and any formal findings. Cite specific documents by tab and page (e.g., “Tab 3a, p. 4”). If the same conduct gave rise to any parallel proceeding — a Chapter 75 adverse action, MSPB appeal, EEO complaint, grievance, arbitration, or criminal or administrative matter — identify it, state its status or outcome, and cite the documentation by tab and page. If the Agency knew of this conduct before making a favorable suitability determination on the appellant, state that and explain the basis for acting now. Keep this section factual — save legal analysis for Section IV.

III. PROCEDURAL COMPLIANCE

Confirm and cite by tab and page that the Agency provided each protection listed at 5 CFR § 731.501(c)(2): (a) advance written notice stating the charge(s) and specific reason(s) for the proposed action; (b) notice of the right to be represented by a representative of the appellant's choosing; (c) at least 30 calendar days from the date of the notice of proposed action to file a written response and furnish documentation; and (d) a written decision delivered to the appellant explaining the decision and the procedures for appealing it. Also confirm the appellant was given the opportunity to review the materials relied upon on request. If any protection was not provided, or was provided late, state that expressly and explain the circumstances — do not omit it.

IV. ANALYSIS — SUITABILITY FACTOR(S)

Identify which factor(s) under 5 CFR § 731.202(b) apply. Explain in plain terms how the facts of this charge connect to each factor. Be specific — cite documents by tab and page. Explain the nexus between the conduct and the duties, responsibilities, and access requirements of this specific position.

V. ADDITIONAL CONSIDERATIONS UNDER 5 CFR § 731.202(c)

Address each of the seven regulatory considerations below that is pertinent to this charge. A consideration may be aggravating as well as mitigating. If a consideration is not pertinent, state that expressly and briefly explain why — do not leave it blank. Cite supporting evidence by tab and page.

1. Nature of the position for which the individual is applying or in which the individual is employed.

[Describe the duties, access, responsibilities, and sensitivity level of the position.]

2. Nature and seriousness of the conduct.

[Was the conduct intentional or negligent? Isolated or repeated? Did it cause harm?]

3. Circumstances surrounding the conduct.

[Describe contextual factors — personal crisis, workplace environment, provocation, etc.]

4. Recency of the conduct.

[When did the conduct occur? How much time has passed, and is the passage of time relevant?]

5. Age of the individual at the time of the conduct.

[If the conduct occurred when the appellant was a minor or young adult, address how that affects the assessment.]

6. Contributing societal conditions.

[Address broader social, economic, or environmental factors that may have contributed.]

7. Absence or presence of rehabilitation or efforts toward rehabilitation.

[Describe steps the appellant has taken to address the conduct. Rehabilitation is relevant both to whether the charge is sustained and to which action is appropriate.]

Note: Section V analyzes the seven regulatory considerations; Section VI addresses specific mitigating and exculpatory evidence the appellant has offered or that appears in the record. Rehabilitation evidence may appear in both sections — address it in each where relevant, with specific record citations.

VI. MITIGATING AND EXCULPATORY EVIDENCE

The record must include the Agency's consideration of mitigating, rehabilitative, contradictory, and exculpatory evidence. Distinguish between two types of evidence:

- Exculpatory evidence tends to disprove a specification — it goes to whether the charge is sustained at all.
- Mitigating evidence accepts that the conduct occurred but bears on which action is appropriate.

Appellant's Response to Proposed Action Letter:

- ☐ Response received on: _____ (Tab _____, p. _____)
- ☐ No response received within the response period stated in the proposed action letter (minimum 30 calendar days).
- ☐ Appellant declined to respond (documentation of declination at Tab _____, p. _____).

[For each piece of mitigating or exculpatory evidence — whether raised by the appellant or found in the record — identify it by tab and page number, state the weight the Agency gave it, and explain what effect it had on the action selected. Address: (a) every assertion raised in the appellant's answer; (b) any record evidence that contradicts a specification; and (c) any evidence of rehabilitation or changed circumstances bearing on the additional considerations in Section V. If it reduced the action (e.g., shorter debarment), say so. If it had no effect, explain why.]

Note: If the appellant submitted a response, address every assertion raised. If no response was submitted, state that expressly — an omission is indistinguishable from a failure to consider. Confirm as well that every document relied upon in this analysis was disclosed to the appellant. OPM may not rely on nondisclosed material to affirm the suitability action unless the appellant received notice of its substance and a meaningful opportunity to respond, except as otherwise authorized by law (5 CFR § 731.503(c)). If any material relied upon was withheld, redacted, or protectively handled, identify it in the privilege log at Tab 6 and state what notice of its substance the appellant received.

VII. ACTION TAKEN AND RATIONALE

[State which action the Agency took and why. The suitability actions available under 5 CFR § 731.203 are: (1) cancellation of eligibility; (2) removal; (3) cancellation of reinstatement eligibility; and (4) debarment. Not every action is available to every responsible agency. Acting under delegated authority, an agency may cancel eligibilities, remove the individual, and impose an agency-specific debarment; only OPM may cancel reinstatement eligibility and impose a Government-wide debarment. State which actions were available given the appellant's status (applicant, appointee, or employee) and the Agency's delegated authority under 5 CFR § 731.103 — the Agency is not expected to justify declining an action it had no authority to take. Then explain: • The nexus between the conduct, the suitability factor(s), and the duties of the specific position — what about this position makes the conduct particularly serious. • Why the action taken is warranted and why a less severe action would not adequately protect the integrity or efficiency of the service. • Whether this charge alone would support the action, or whether it contributes to the overall basis (see also Section VIII). If the action includes debarment: state the period imposed and why that period is appropriate. An agency-specific debarment bars the individual only from positions within the Agency; a Government-wide debarment, which only OPM may impose, bars the individual from all positions covered by 5 CFR Part 731. Neither may exceed three years, and in either case the period runs from the date of the final decision. If a Government-wide debarment appeared warranted, state whether the case was referred to OPM under 5 CFR § 731.103.]

VIII. CUMULATIVE BASIS FOR ACTION

[Complete this section only when there are two or more charges. Explain the overall basis for the action, drawing together all sustained charges. Address whether the action is supported by the cumulative weight of all charges, and how the combination of conduct, factors, and additional considerations supports the action taken.]