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## INSIGHT

BY MIKE CAUSEY

### Home Wreckers

Word that there will be a new addition to the family is often—not always, but often—a happy event. Knowing that there soon will be the pitter-patter of little feet around the house makes some people feel all warm and fuzzy.



Good times! As it should be.

But—and in life, there nearly always is a “but”—notice that I said the newcomer was expected “at your house.” Not at your office. Big difference. And the pitter-patter of little feet refers to children and babies. Not mice. Not a pet hamster or rabbit. And certainly not a fully-formed 33-year-old “baby” who has the ability—and maybe the intent—to come into your office and either take your job or become your boss.

But first, this lesson from Mother Nature:

Did you ever wonder why people who keep birds as pets go for parrots, parakeets or canaries? Did you ever see a vulture in a cage? Or a penguin? Or a cowbird?

Vultures are self-explanatory. They are ugly, big, and because of their diet, they have bad breath.

Penguins are hard to find, hard to keep and besides, it's illegal.

But you could probably have a cowbird as a pet (I mean, who's to

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### Foreign Service Officers Cite HR, Security Clearance Woes

A group representing State Department diplomats is turning up the heat on senior officials—and Congress—to fix what they see as bad policy, as well as alleged incompetence among the agency's human resources and internal security leadership.

The group, Concerned Foreign Service Officers (CFSO), which claims hundreds of supporters at the agency, long has complained that under the current administration there has been growing abuse of the nation's diplomats by the department's internal security office. That office has revoked the security clearance of more than 200 diplomats over the last five years—almost always for the wrong reasons, according to CFSO.

“Right now there are about 40 to 50 Foreign Service Officers (FSOs) who remain in long-term limbo—that's two years or more with no action on their appeals over their security clearances,” Daniel Hirsch, a member of the group's executive committee, told *FEND*. “In a few cases, they got their clearances back—but in the last two years, the number of people who have done so has dropped precipitously.”

The group says that the problem is a State Department office, Diplomatic Security (DS). “This office conducts the background checks, as well as being a court that makes the decision on who gets to keep their clearances,” Hirsch said. “The investigations are conducted by agents in the field, and in recent years many of the agents are new, and

have received training at Glynco Law Enforcement Training Center—only in the conduct of criminal investigations and not background investigations—and as a result, they conduct investigations geared toward making a criminal case, rather than personnel security background investigations.”

The American Foreign Service Association (AFSA), which represents more than 11,000 State Department diplomats, also has complained of many of the department's practices.

“On the general issues they raise, CFSO is right,” John Naland, the president of AFSA, told *FEND*. “There is an ongoing problem of people's security clearances being suspended—and, worse, they can be in limbo for years.” And, Naland said, “in the State Department, there are very few jobs you can get without an active security clearance.”

CFSO said in a release that nearly all of the security suspensions followed “single unsubstantiated allegations of minor violations of a security regulation,” and that the “vast majority” come down to Cold War-era rules on contacts with foreigners which State has acknowledged are “contradictory and obsolete.” For example, an article in the *Foreign Service Journal* cited the case of an FSO suspended partly because he

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## INSIGHT by Mike Causey

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know?) if you wanted. And it might be nice to have one or two as part of your home aviary.

The problem is that cowbirds are into what is known as “brood parasitism.” That is, they lay their eggs in another bird’s nest, then disappear. In this case, the original nest-builders—birds literally of a different feather, like cardinals or wrens—lay their eggs beside the cowbird eggs. Both broods hatch. The cowbirds are bigger and stronger and they get most of the food. They will either starve the legitimate tenant birds, or push them out of the nest. One African variety of cowbird is born with a hook so it can kill other baby birds and get all the food. It is, as they say, a jungle out there.

Anyhow, if all goes according to the cowbird plan, the non-cowbird parents (who are devoted, but sort of dumb) continue to feed the cowbird hatchlings even as their own baby birds starve or disappear.

So do you get the connection? Outsiders pushing insiders out? I think it is rather clever, and it may be the first time anyone has made a connection between cowbirds and the federal civil service.

Believe it or not, I interviewed 20 people for this piece. Some were old-timers (not unlike myself). Some were new folks. I asked them to write up their thoughts on the joys and sorrows of a mixed young-older office. And believe it or not, 18 of them turned in their essays. Great stuff.

Here is one example, from an older (now retired) fed about her experiences while working in a happy, then a not-so-happy environment. Here’s her e-mail:

“When I first started working for the federal government so many years ago, I did not think of it as long term. I wasn’t going to be like my father, who worked 40 years for one company, no way. Just make some money to buy clothes and have a good time.

“I graduated from a business high school in 1967 and started working for an insurance company. A couple of months later, my girlfriend told me to come down to where she worked and apply for a job for more money. She worked in personnel at IRS. I made an

appointment and took the civil service test. That same day I went on an interview and was hired as a temporary GS-2 Clerk-Typist and started working the following week.

“There were no thoughts in my head about serving the public and making a career in government. But gradually over the years as I worked my way up and through another agency, I learned the history of the Treasury Department and of those agencies I worked for. Another change in my thought process occurred when I talked to the “old-timers” who related many stories of the good old days when they worked the moonshine cases. I began feeling a sense of family and belonging and pride. Of course, my parents were proud that I worked for the government. They were thrilled I had a good-paying, stable job.

“Went to night school for many, many years, got married and had children and continued to work for the government while receiving promotions every couple of years.

“Toward the end of my career, several things happened to change my mind about continuing working for the government. Our agency underwent yet another reorganization. This time the agency was split in half; the part I worked for transferred to the Justice Department. This meant change. We were working exclusively for a law enforcement agency and had to adapt to them. We were told change is good and I really tried to believe that. My job changed and I adapted. I now worked for a department where I had no sense of history or familiarity. I still worked with some of the people I worked previously with while adapting to a new management style.

“I enjoyed working with new hires and guiding them when they first came onboard. But as the days, months and years rolled on, I did get the feeling from management that the work I did didn’t matter any more. Most top management where I worked came in for two years and then left for parts unknown. Then we had to start all over again with the new crew. They didn’t want to know us or care what we had to say. So once again I changed. By that time, I only had a few more years to go to retire. I stopped making sugges-

tions, did my job the best I could and waited for the day I could submit my retirement papers. We were no longer a family.

“I’ve been retired for several years now and am quite happy. I’ve adapted once again and have found satisfaction in the things I now do. I’ve flirted with the idea of going back to work for the government, but I don’t think that will happen. In my heart, I do have hope for the young hires. It’s up to the agencies to instill home in the young people who want to work for the government. They come in with the idea of a job to pay the bills, but it’s the agencies’ job to nurture them so they’ll stay and have purpose and a future.”

If you’ve been around a while, you may identify with some or all of this. If you are a newcomer, it’s a personal history lesson. If you have any thoughts on the subject, fire away.



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had a Russian girlfriend prior to the completion of an ongoing divorce.

Furthermore, none of the current group stands accused of poor performance at work. Many have received awards, and almost all have been promoted multiple times. Six have received “employee of the year” awards, the group says.

But because of the endless delays in their appeals and what CFSO says is high-handedness at DS, many FCOs who lose their clearance simply quit—or, because a large portion are senior diplomats, retire early.

“Concerned Foreign Service Officers decries these practices,” the group said in a release. “Forcing experienced, award-winning FSOs out of the service is not merely unfair, it hampers the ability of the State Department to protect Americans and meet its mission overseas.”

Several months ago, CFSO focused its criticism on DS for allegedly conducting overly zealous investigations—and for unfairly penalizing employees by imposing security clearance suspensions at the drop of a hat. Last week, CFSO turned its scrutiny toward another State Department office: the Bureau of Human Resources (HR).

HR is responsible “for ensuring that these employees receive due process and for finding real jobs for them to do,” the group said in a release. Instead, according to CFSO, HR continues to force high-ranking, but clearance-suspended employees out to pasture.

In one case, CSFO said, an FSO with more than 18 years experience has been assigned for more than three years to manage a State Department parking lot. The department also is trying to force many employees out of the service by low-balling their performance and assigning them unpleasant duties, according to the group.

“Recently, HR has begun a campaign to label all such employees as problem employees,” a CFSO release said. The group further criticized the HR office for failing to help employees with suspended security clearances to get the best temporary positions they can, and for failing to inform promotion review panels.




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“State should either tell the promotion panels that the employee is involuntarily assigned due to a suspended clearance—or they should exempt the employees altogether from the annual review requirements,” Hirsch said. “These employees have no say on how they are assigned, really.”

“I have served on promotion panels, and these panels go only by what’s in the file,” Naland told *FEND*. “On the other hand, if the panels were informed of all security clearance suspensions, would that really help the employees in question?—I don’t think so.”

In response to Naland’s comment, Hirsch said. “This is why it would be preferable for the department to actually exempt such employees from the annual rating requirements—because annual ratings are ridiculous under their current circumstances.”

A call by *FEND* to the State Department was not returned by press time.

For more, go to: <http://www.worldcrafters.com> and [www.afsahq.org](http://www.afsahq.org). 

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## AFGE: Gonzales Resignation Was ‘Inevitable’

**T**he American Federation of Government Employees (AFGE) called last week’s resignation of Attorney General Alberto Gonzales “inevitable,” and expressed hopes that his departure would help to begin restoring credibility to the Department of Justice (DOJ), which for months has been battered by controversy.

Gonzales was “not the right man for the job,” AFGE President John Gage said in an Aug. 27 statement. “He lacked proper judgment, and his outright refusal to be honest and upstanding was a disservice to the DOJ.” In addition, Gage said,

Gonzales’ “prior refusal to step down was an embarrassment to the federal government, a detriment to the work of DOJ employees and put the agency in poor standing with the American public.”

It’s not quite clear what tipped Gonzales toward resigning. Both the White House and Gonzales himself appeared to be dug in, despite a hearing in July when Democratic Sen. Patrick Leahy of Vermont said Gonzales had “lost the confidence of the Congress and the American people.” Sen. Arlen Specter, R-Pa., was far more pointed, telling the attorney general during the hearing: “I don’t trust you.”

Even before the July hearing, critics had been calling for Gonzales’ ouster. Lawmakers raised questions earlier this year about whether he testified truthfully about the National Security Agency’s surveillance programs. Criticism of Gonzales later increased in the wake of questions over whether politics within the Department of Justice played a role in the firings of nine top federal prosecutors.

“The department’s hardworking lawyers, law enforcement officers, and staff are trusted to defend our Constitution, not one administration or political party,” said Sen. Hillary Clinton, D-N.Y. “That trust is central to the sanctity of the rule of law and the vitality of our democracy.”

Gonzales’ resignation, which is effective Sept. 17, comes just two weeks after the resignation of Bush advisor Karl Rove. The temporary replacement for Gonzales is Solicitor General Paul Clement, who will serve until a permanent replacement is found.

President Bush expressed his unhappiness with the events surrounding the departure of Gonzales, whom had come to Washington with the president from the governor’s mansion in Texas. “It’s sad that we live in a time,” said Bush, “when a talented and honorable person like Alberto Gonzales is impeded from doing important work because his good name was dragged through the mud for

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political reasons.”

While he was critical of Gonzales, AFGE's Gage was quick to acknowledge the service of both former Deputy Attorney General James Comey and FBI Director Robert Mueller, who had long been at odds with some of Gonzales' efforts.

AFGE, which represents more than 20,000 employees at DOJ, expressed hopes that Gonzales' departure would help the department recover from the recent controversies.

“AFGE is cautiously optimistic that the next attorney general will be committed to resurrecting the longstanding, proud reputation of DOJ that was shattered by Gonzales and Bush's political interference,” Gage said.

To see more, go to: [www.afge.org/Index.cfm?Page=PressReleases&PressReleaseID=783](http://www.afge.org/Index.cfm?Page=PressReleases&PressReleaseID=783). ☞

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## OPM Issues New Rules as Part of Retirement System Upgrade

The Office of Personnel Management (OPM) has proposed a new set of rules as part of its Retirement Systems Modernization (RSM) project, which is intended to streamline retirement processes by converting to an electronic records-based system.

Among other things, the rules would speed up processes by allowing OPM to gather important information, like employees' signatures, electronically.

The modernization project is intended to upgrade the quality and speed of services to federal retirees and the more than 3 million active employees in the Federal Employees Retirement System and the Civil Service Retirement System. Under the current paper-based system, it often takes months for retired federal employees to receive the correct annuity payment, OPM said.

Planned enhancements include greater employee access to their retirement and insurance information

under RSM, as well as access to Web-based tools that will provide improved customer service and allow for better retirement and insurance benefits counseling, OPM said in a *Federal Register* notice.

OPM pointed out that unless explicitly provided for, there is no intention to make substantive changes in provisions governing eligibility for retirement or formulas for computing annuities. However, the initiative's greater ability to capture and use more detailed information will permit more precise and accurate calculation of some aspects of financial planning. Accordingly, RSM will provide the most accurate computation possible, OPM said.

RSM would allow applications, forms, notices, elections and other related submissions which otherwise would be required to be made in writing to be submitted electronically. It also allows all such submissions to be made to OPM through the RSM electronic processing system, regardless of any other requirement for some individuals to submit certain documents to their employing agencies or OPM, the agency said.

Electronic records that are acceptable for processing by the RSM system include electronic data submitted through the Enterprise Human Resources Integration system and data from electronic Official Personnel Folders, as well as paper documents that have been converted to digital form by image scanning or other means.

Federal employees need not worry about the conversion of existing paper records, OPM noted. Paper documents that have not been converted to electronic or digital form will continue to be acceptable records for processing under RSM, OPM said.

Implementation of RSM is slated to begin in February 2008, according to OPM, and retirement and insurance records of current employees and annuitants will be migrated into the system in a series of waves.

The proposed rules are open to public comment until Sept. 17.

To see more, go to: <http://a257>.

[g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/E7-16256.pdf](http://g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/E7-16256.pdf).

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## Advocacy Group, Lawmakers Express Concern Over IG Misconduct

A government watchdog group and House Democrats expressed concern over recent instances of Inspector General (IG) misconduct—and whether agencies take the matters seriously enough.

In a recent letter, the Project on Government Oversight (POGO) urged Clay Johnson—chairman of the President's Council on Integrity and Efficiency (PCIE) and deputy director of the Office of Management and Budget (OMB)—to preserve the integrity of the IG system by correcting such misconduct.

The letter comes in the wake of revelations of IG wrongdoing. This includes a May finding by the Office of Special Counsel (OSC) that Department of Commerce IG Johnnie Frazier had retaliated against whistleblowers—former Deputy Inspector General (DIG) Edward Blansitt and former IG Counsel Allison Lerner—who claimed he had abused travel privileges. Blansitt filed a complaint with PCIE last year after Frazier was unable to provide justification for an official trip to Boston and New York in August 2006.

Shortly after Blansitt told Frazier he was filing the PCIE complaint, Frazier demoted Blansitt, as well as Lerner—whom he thought was working with Blansitt on the complaint, the OSC found. Furthermore, just before he demoted the two employees, he ordered assistants to draw up new rules for the IG's office that removed travel voucher approval authority from the DIG—Blansitt's old post.

When questioned by OSC, Frazier denied the personnel moves were

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connected to the PCIE complaint. He said he moved the two because they worked too closely together, OSC noted. Frazier also told investigators that others in the office had complained about Blansitt's elbows-out management style, but informed Blansitt only that he was being transferred "in the best interests of the organization.

Frazier offered the DIG post to two others in the IG's office—both refused—before Elizabeth Barlow accepted. OSC has concluded that the personnel moves were illegal and Frazier has since retired. But lawmakers questioned whether the acting IG should be Barlow—who they say obtained her position as part of Frazier's efforts to retaliate against one of these employees.

Reps. John Dingle, D-Mich., and Bart Stupak, D-Mich., sent a letter to Commerce Secretary Carlos Gutierrez asking him whether Barlow should remain. "We are troubled by your action and wonder whether you have been fully briefed by your staff," the lawmakers wrote. "Ms. Barlow has been rewarded for her involvement in Frazier's illegal scheme. This makes a mockery of the OSC investigation as well as long established whistleblower protection statutes."

To see more, go to: [www.pogo.org/p/government/ga-070821-ig.html](http://www.pogo.org/p/government/ga-070821-ig.html).

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## In Brief

### **IRS Addresses Recruitment, Retention Challenges**

To address a potential staffing shortfall in coming years, the IRS plans to offer bonuses to current employees and waive restrictions on the employment of retired annuitants, agency officials told the IRS Oversight Board. According to an Aug. 22 statement from the board, about 4,000 IRS employees are expected to retire each year for the next four years. In addition to replacing employees who leave, the IRS is seeking to expand the size of its existing work force in the area of enforcement. Priorities for FY 2008 include beefing

up agency-wide revenue agent hiring, expanding filing season recruitment support, and targeting key demographics in the recruitment pool, the board said. Oversight Board members also questioned whether the IRS has measures that can evaluate the effectiveness of the current pay-for-performance system to motivate high performance. In response to the board's observations, National Treasury Employees Union (NTEU) President Colleen Kelley pointed out that the IRS must do a better job of addressing the needs of its employees—including, she said, by focusing on low morale caused in part by the agency's efforts to contract out employees' work. To see more, go to: [www.treas.gov/irsob/press-posting\\_08222007.shtml](http://www.treas.gov/irsob/press-posting_08222007.shtml).

### **Nurses Union To Merge with APWU**

A small union representing postal nurses voted on Aug. 17 to merge with the American Postal Workers Union (APWU), according to a posting on the APWU Web site. APWU said the National Postal Professional Nurses (NPPN) will become a part of the larger union's Support Services Division. "We welcome this group of dedicated professionals as an integral part of our union, and look forward to mutually beneficial activities on behalf of all APWU-represented employees," said APWU President William Burrus. APWU said it will represent the nurses at contract negotiations slated to start Sept. 18. The nurses' union has had collective bargaining agreements with the Postal Service since 1978. The USPS 2006 annual report tallied the number of nurses employed by the Postal Service at 166. To see more, go to: <http://apwu.org/news/webart/2007/webart-0780-nurses-070822.htm>.

### **Emergency Chief Says GSA Better Prepared**

The General Services Administration (GSA) is now better prepared to handle a natural disaster of national proportions with the expansion of the agency's emergency response office,

GSA's chief preparedness officer told a conference in New Orleans. GSA Chief Emergency Response and Recovery Officer Richard Reed spoke at the Gulf Coast Reconstruction and Preparedness Summit on Aug. 28. Reed said the emergency response office has been expanded and operations streamlined to provide aid more quickly in response to a natural disaster. Much post-Katrina criticism centered on the federal government's inadequate and slow response to the damage caused by the 2005 hurricanes. "As the federal government's premier acquisition agency, we recognize that after a disaster, GSA can make a huge difference in how quickly a community recovers," Reed said. One improvement involves GSA's new disaster recovery purchasing program for state and local governments, which allows state, local and tribal agencies to directly access GSA Schedules. To see more, go to: [www.gsa.gov](http://www.gsa.gov).

### **Army Offers Bonus for CIC Special Agents**

The Army is offering \$20,000 lump-sum bonuses to active servicemembers who complete the Criminal Investigation Command (CIC) Special Agent Warrant Officer Basic Course by Sept. 30, 2008. The Critical Skills Accession Bonus (CSAB) is to help encourage qualified soldiers—especially qualified enlisted agents at the staff sergeant level—to apply for warrant officer, the Army said in an Aug. 22 statement. The bonuses will also help the Army meet the ever-present demand for special agents, according to Col. Ben Grigsby, Criminal Investigation Division (CID) deputy chief of staff for support. CID is currently below its target goal in warrant officers, but slightly over its goals for enlisted special agents. "Our CID special agent authorizations will increase in Fiscal Year 2008 in order to fill several newly authorized CID detachments," Grigsby said. To see more, go to: [www.army.mil/-news/2007/08/22/4523-become-a-special-agent-get-20k](http://www.army.mil/-news/2007/08/22/4523-become-a-special-agent-get-20k).

### Withdrawing Funds from the TSP: Part III

In a series of five columns, “Informed Investor” is presenting the various ways in which Thrift Savings Plan (TSP) participants may withdraw their monies from their TSP accounts. This third column discusses the full withdrawal option.

TSP participants may withdraw all of the monies from their TSP accounts through: (1) a single payment; (2) a series of monthly payments; (3) a life annuity; or (4) a mixed withdrawal. The single payment and monthly payments are discussed below; next week’s column will discuss the TSP life annuity.

Withdrawing one’s entire TSP account balance in a single payment is probably not financially prudent. TSP withdrawals are subject to ordinary income taxes, and by making a full withdrawal, the TSP participant could end up in a higher federal, and in some cases, state marginal income tax bracket. Consider this example:

*Janice retires from federal service on Sept. 30, 2007. She has \$300,000 in her TSP account. On Nov. 1 she decides to make a full withdrawal from her account. When added to her other income, such as interest, dividends and salary, Janice places herself in a 35 percent federal and an 8 percent state marginal tax bracket. She consequently owes federal income tax of 35 percent of \$300,000, or \$105,000, and state income tax of 8 percent of \$300,000 or \$24,000. The TSP will automatically withhold 20 percent federal income taxes, but Janice is responsible for paying any remaining federal and state income taxes owed by the time she files her 2007 income taxes, due no later than April 15, 2008.*

To request a full withdrawal, participants can access the TSP Web site at [www.tsp.gov](http://www.tsp.gov) or fill out Form TSP-70, Request for Full Withdrawal. The form may be filled out online in Account Access. For security reasons, the form will have to be printed out and mailed to the TSP for processing.

TSP participants also can withdraw their entire account in a series of monthly payments. There are two ways of withdrawing monies on a monthly basis—specific dollar amount, and monthly payments.

With the specific dollar method, a participant chooses the specific dollar amount he or she wants to receive until the entire account balance has been paid to the participant. The amount of each monthly payment must be a minimum of \$25.

Monthly payments can also be computed by the TSP based on IRS life expectancy tables. The initial payment will be based on a participant’s account balance at the time of the first payment and the participant’s age. Each year, on the anniversary date of the participant’s first monthly payment, the TSP will recalculate the amount of the participant’s monthly



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payment. The recalculation will be based on the participant’s age and the account balance at the end of the preceding year. Here is an example to illustrate:

*Peter, age 63, retired from federal service on Feb. 28, 2007. He decides to immediately withdraw monies from his TSP account, using monthly payments based on life expectancy. The first monthly payment will be May 1, 2007. As of April 30, 2007, Peter’s account balance was \$195,000. According to IRS life expectancy tables, Peter at age 63 has a life expectancy of 22.7 years. Each month from May 2007 to April 2008 inclusive, Peter can expect a TSP payment of:*

$$\$195,000/22.7 = \$8,590 \text{ or } \$716 \text{ per month}$$

*As of Dec. 31, 2007, Peter’s account balance is \$185,000. Peter will turn 64 during 2008 and his life expectancy according to IRS life expectancy tables is 21.8 years. Effective May 1, 2008, Peter’s annual monthly payout will be:*

$$\$185,000/21.8 = \$8,486 \text{ or } \$707 \text{ per month}$$

Participants can also choose to have the TSP transfer some or all of their monthly payments to a traditional IRA or to an eligible employer retirement plan. The amount transferred each time can be to only one IRA or to one eligible retirement plan. If the transfer is a direct (“trustee to trustee”) transfer, then the TSP will not withhold any federal income taxes.

Participants who are receiving monthly payments can request the following:

- Change monthly payments to a final single payment;
- Begin transferring monthly payments or change (stop) the portion of each monthly payment that is transferred to an IRA or an eligible employer plan;
- Change the IRA or retirement plan to which the participant’s payments are sent;
- Begin direct deposit for the portion sent directly to the participant, or stop direct deposit and have checks sent directly to the participant; and
- Change the financial institution or the checking or savings account that is receiving the participant’s monthly payments.

Form TSP-73 is used to request any of these changes. Form TSP-73 also can be used to ask for a change to a different monthly payment amount that will become effective with the first payment received after Dec. 31. This form also allows a participant to change the dollar amount that is being received based on life expectancy (as computed by the TSP) to a fixed dollar amount (as specified by the TSP participant), a one-time only change.

# Defense Worker Fights Dismissal Over Phone Calls

**A** Financial Clerk with the Department of Defense Finance and Accounting Service, Charles D. Griffin, ran into trouble with the agency in January 2003. That month, co-workers complained that Griffin was “loud”—and that frequently he used “foul” language—while on personal telephone calls, disrupting the workplace.

Late that month, according to official documents in the case, Griffin’s supervisor attempted to rectify the situation by having an “informal” talk with the DoD employee about the matter. The supervisor noted that Griffin’s job required literally no use of the telephone, and warned him to stop using it so liberally.

But the issue continued, and, by March, Griffin was reprimanded for “misusing” his work phone. Government logs revealed he made over 650 personal calls over the three-month period December 2002 to the beginning of February 2003.

Also, the same logs showed Griffin had been on the phone 13 minutes out of every hour in the workplace—and the figure covered the period after he received the reprimand and was warned to cease. In a single 47-hour stint in April, Griffin made 623 calls.

Upon investigating, a supervisor recommended Griffin be suspended for 14 days. From July 16 through July 30, 2003, Griffin was placed on suspension. Due to documented medical advice from a physician, he did not return to work at DoD until September 2003.

On returning, despite the reprimand, suspension and the lengthy break, Griffin’s abuse of his work phone continued, according to documents. The agency removed him accordingly.

Griffin appealed his dismissal to the Merit Systems Protection Board (MSPB). He admitted up front that he had no official need to use his work phone, and that “none of the calls he was accused of making” had been made by anyone but himself. Instead, Griffin accused his supervisor of “untruthful” testimony regarding his telephone use.

But the MSPB administrative judge (AJ) that handled the case found the supervisor’s testimony and the supporting phone records compelling and sound—and rejected many of Griffin’s statements as being “not credible.” Specifically, the AJ found “inconsistencies in his testimony,” “extreme evasiveness” and a failure of Griffin to find any “motive his supervisors might have to produce dishonest testimony.” Griffin appealed to the full board, but the panel sustained the AJ’s ruling.

Griffin appealed again, to the U.S. Court of Appeals for the Federal Circuit. He tried a new tack, arguing that MSPB failed to consider his “prior performance” that had brought good reviews and even several service awards. He also

objected that the board leapt to a very severe punishment. But the court found that Griffin had been given multiple warnings—and that firing represented a “reasonable penalty.” Griffin’s removal stands.

*(Griffin v. Dept. of Defense, U.S. Court of Appeals for the Federal Circuit, Docket No. 2006-3319, 8/17/07)*

## DEA Statistician Loses Appeal in Excessive Absences Case

William F. Coach, a Mathematical Statistician with the Drug Enforcement Administration (DEA), exhibited a record of frequent absences from work. Coach repeatedly explained to superiors that these absences occurred due to medical necessity.

But because Coach did not follow procedure in requesting medical leave, over a two-year period he was brought up on two administrative charges. On each occasion, he was issued specific instructions on how to request leave time properly in the future. These printed instructions were derived from a longer policy memorandum entitled “Requirements for Future Use of Annual and Sick Leave” issued by DEA. More importantly, Coach repeatedly was warned that “his leave problems would not be tolerated and could result in serious discipline.”

Yet, according to the agency, Coach failed to follow the instructions in a spate of subsequent absences. On Aug. 15, 2005, a deciding official removed Coach from his position, alleging he had taken 303 hours of unauthorized leave time.

Coach filed an appeal with the Merit Systems Protection Board (MSPB), denying a total of eight specifications of “failure to follow instructions” and nine specifications of “excessive absence without leave,” again claiming medical necessity. The administrative judge (AJ) hearing the case ruled for the DEA, noting that agency records showed he missed the days in question and failed to submit proper leave requests. The AJ found, in addition, that Coach “failed to submit adequate medical documentation” to buttress his medical claim.

Coach appealed again, to the full MSPB. But the full board agreed with the agency and the AJ on all specifications, and affirmed his removal. The DEA statistician appealed yet again, to the U.S. Court of Appeals for the Federal Circuit. But when the appeals court asked him directly where the board made mistakes, Coach, according to court documents in the case, replied only with: “I don’t know.” He also failed to introduce any new evidence in his favor.

The appeals court ruled against Coach’s appeal, and his removal stands.

*(Coach v. Department of Justice, U.S. Court of Appeals for the Federal Circuit, Docket No. 2006-3332, 8/13/07)*

# Has Clerk Earned 'Permanent' Status—And Right Of Appeal?

“I did inventory management as a civilian employee of the Army for a little more than a year,” said John Green,\* who took the job in early 2006. “But it was more than a year, and that’s crucial, because under the law it gives me the right to appeal.”

“I was fired in 2006, because the Army alleged I had a performance problem,” he continued. “But my work was fine—they only ejected me because I blew the whistle on unsafe practices at the base. I’m going to prove it, too, if I can get a judge to see that I achieved permanent employee status and give me a hearing,” he said.

“I’ve interviewed the managers in this case,” said Cheryl Sims, a lawyer for the government. “Green’s performance simply wasn’t up to standards—and his ‘whistleblower’ claims are unfounded.”

**FACTS:** Army records show that Green was hired on Feb. 19, 2006, as a GS-9 Inventory Management Specialist. Although some of his work was adequate, overall his managers eventually reported performance problems, according to the Army. As the end of his probationary period approached, Army managers decided to remove Green based on these performance issues.

A deciding official removed Green from his job on Feb. 6, 2007. Green complained to his superiors, and quickly appealed to the Merit Systems Protection Board (MSPB). He charged that the Army “did not provide him with any counseling, warning, performance improvement plan, or notice of proposed termination,” according to official documents in the case. Furthermore, Green insisted, the agency had based his firing on “unsubstantiated information.”

An administrative judge (AJ) with MSPB rejected Green’s claims outright, stating that he was fired within his probationary period and that therefore under the law he is not eligible to appeal, except under two possible conditions: if his employer had discriminated against him based on partisan political reasons or on his marital status, neither of which was claimed by the appellant.

In reply, Green objected that the Army had not given him advance notice or the ability to respond prior to firing him—normal, and under many circumstances required, procedures, he noted. But more importantly, Green noted that, despite the order, the Army did not actually remove him before Feb. 19, 2007—his one-year anniversary and the end of his probationary period. Instead, the service had placed him in “leave without pay” status. Green argued that this meant he had the right to appeal as a preference-eligible employee. Buttressing his argument, Green cited the standard form terminating him from employment—and indeed it was dated Mar. 8, 2007.

The AJ disagreed—although Green had produced “copies of perfunctory personnel actions” that were implemented after his removal date, such evidence “does not establish that appellant was actually employed by the agency” when they were belatedly processed.

**Should Green be treated as a permanent employee—and get a hearing?**

**DECISION:** An AJ with MSPB ruled on April 26, 2007, that the appellant had made an inadequate case that he had served more than a year in his job and was a permanent employee. Therefore, the AJ said, the board had no jurisdiction in the case. But Green appealed again to the full MSPB, which ruled instead not that the appellant had proven his case, but that his claims merited another hearing.

The full board agreed with the AJ that the SF 50 termination document produced by Green showing that his firing order wasn’t actually effected until Mar. 8, 2007, does not prove he remained employed with the government through that date. “Approval of an SF-50 is treated as a clerical task,” the board wrote, “which customarily occurs after the effective date of the action, and such approval does not affect the effective date of the action.”

However, Green produced a second document—this one showing he had earned pay as an employee well into March. This document, the board wrote, “calls into question the effective date of his termination.” The board cited a similar case in which a pay statement was taken as evidence proving another federal employee’s last day of employment (*Liu v. Department of Agriculture*, 2007).

The board ruled in favor of Green’s request for a hearing, and remanded the case to the AJ to make a factual determination on the evidence.

(MSPB, Docket No. Docket No. AT-315H-07-0463-I-1, 8/27/07)

*\*Names and dialogue are fictitious, but details are based on a real case.*

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