

SUBJECT: Threatening Conduct

1. Threatening conduct and work place disruption are issues taken very seriously by the Department of Defense, Army, and the MEDCOM. This memorandum will serve to remind addressees of two items; (1) that final arbitrators' decisions under negotiated grievance/arbitration procedures on matters that could have been appealed to the Merit Systems Protection Board (MSPB) may be subject to review by the MSPB, and (2) of MSPB case law dealing with adverse actions taken for threatening conduct.

2. In a recent case, the MSPB once again upheld an agency removal action taken for engaging in threatening conduct and making statements that resulted in anxiety and disruption in the workplace. As reported in the Federal Merit Systems Reporter (101 FMSR 5226; Sands v. Department of Labor, Docket Number CB-7121-00-0023-V-I, 1 May 01), the MSPB upheld the agency's action and the arbitrator's decision that the action was supported by a preponderance of the evidence and that the penalty was reasonable. The employee, a GS-06 Office Management Assistant, was removed for 1) engaging in threatening conduct when three co-workers allegedly heard her threaten to kill two supervisors, and 2) making statements that resulted in anxiety and disruption in the workplace. The appellant made several statements to her first and second level supervisors that she was "going to get a gun and blow both of them away".

3. The lead MSPB/court case regarding threatening conduct is Metz v. Treasury (780 F.2d 1001 (Fed. Cir. 1986)). The Federal Court of appeals for the Federal Circuit directed the MSPB to consider five factors in deciding whether an employee engaged in threatening conduct:

- a. The listener's reaction;
- b. The listener's apprehension of harm;
- c. The speaker's intent;
- d. Any conditional nature of the statements; and
- e. The attendant circumstances.