



Federal Employees News Digest

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In this issue >>

• Insight By Mike Causey	1
• Unions React to Plan to Trim Civilian Pay Raise	1
• OPM Changes Vets' Preference Age Rule	3
• OPM Proposes Changes to Leave Rules	3
• Informed Investor	5
• Rulings Roundup	6
• You Be The Judge	7

INSIGHT

BY MIKE CAUSEY

Reality Hits

Pro-federal worker politicians and unions (which by their very nature are and BETTER BE pro-fed) are learning a lesson about



power, responsibility and ownership. That lesson has been known for thousands of years by small adolescent boys, cave men and pirates and barbarians. The lesson:

It is more fun to be on the outside.

It is easier and more pleasing to be on the attack. To decide when and where to strike. To have an impact on events, rather than having to control them.

Playing defense, whether it is against Genghis Khan's archers or a political party that is out of power, is tough.

It is one thing to run against big government, high taxes or pointy-headed bureaucrats in Washington. It is easy to oppose a war or wars (if the in-crowd started it), or various policies implemented by the outgoing administration. But it is quite another to inherit those situations/problems, to get the daily presidential briefing and learn that as bad as a situation is, it could be worse if you actually keep your campaign

continued on page 2

Unions React to Obama Plan to Trim Civilian Pay Raise

Citing the economic downturn and the skyrocketing federal budget, President Obama on Aug. 31 sent Congress a letter announcing his intention to trim the Jan. 1 pay raise scheduled for most federal employees from 2.4 percent to 2 percent.

In his letter, Obama cited Title 5 of the U.S. Code, which he said authorizes him to implement an alternative pay plan if he judges the pay adjustments to be inappropriate due to "national emergency or serious economic conditions affecting the general welfare." Obama claimed that such an emergency as defined in that law has existed since 9/11.

Obama also noted that "few would disagree that our country is facing serious economic conditions affecting the general welfare," and that "growth in federal requirements is straining the federal budget."

In the days since the announcement, several federal employees' unions have strongly disagreed with the president's call for reducing federal pay increases.

"Bringing federal pay and benefit practices more in line with the private sector would in fact require a hefty pay increase for federal workers," William R. Dougan, president of the National Federation of Federal Employees (NFFE), told *FEND*. "Federal workers do their part to keep the federal budget down every day when they accept substantially less compensation to do the same work as their counterparts in the private sector.

"It is disappointing that the administration would use 9/11 as a means to exploit a loophole in federal law which has the effect of stifling federal pay," Dougan added. "Even under these economic circumstances, 2 percent is a very small increase for workers who are already paid well below those doing similar work in the private sector."

In his letter, Obama said he will decide by Nov. 30 whether to propose an alternative to the locality pay increases slated for January.

The total previously proposed civilian pay increases would have cost about \$22.6 billion, Obama noted.

The president also said that the General Schedule "quit" rate continues to be very low (2.1 percent on an annual basis)—well below the overall average quit rate in the private sector.

The National Treasury Employees Union (NTEU) also expressed its criticism of the White House announcement.

"NTEU is disappointed that the administration continues advocating for a 2 percent pay increase for civilian federal employees in 2010," said NTEU President Colleen Kelley. "NTEU recognizes that it has been a very difficult year for the economy, however pay parity is an important and accepted principle."

The American Federation of

continued on page 3

INSIGHT by Mike Causey

continued from page 1

promises. Remember President Bush 41's famous "read my lips, no new taxes" statement.

It is one thing to promise to streamline government. Yet when you inherit it, you may come to realize that some of the things you wanted to eliminate make more sense once you are in control.

It is one thing to promise to make federal service "cool again." It is another to discover that to do that, it is going to cost money, and tax revenues are down. People outside of government are losing their jobs, taking pay cuts of as much as 25 percent, and being furloughed without pay (school teachers and factory workers) to save money.

It is one thing to promise to speed up an antiquated hiring process. To get people from the outside into government quicker. But that can and does run up against national security requirements when a thorough background check (which is the only kind to have) takes a long time. Cutting corners to hustle people into jobs at the CIA, DIA, FBI, IRS and DoD agencies is not necessarily a good idea. If a security breach or scandal occurs on your watch, it hurts. After a couple of months in office, or better yet a couple of years, it is increasingly hard to blame the previous administration. Although people do it all the time.

The other day, a ranking member of Congress, talking about the recession, placed the core blame on Herbert Hoover, who has been out of kicking range for some time.

There are numerous examples of this kind of change of heart after coming into office in almost every administration. President Richard Nixon, who launched his career fighting communism, went to China. That's something his Democratic predecessors couldn't do—so the thinking goes—lest they be labeled "soft" on communism.

And so on, down to today.

Early in this administration, the White House told the Pentagon to stop using the phrase "war on terror." It was replaced with the term "overseas contingency operation." But "war on

terror" popped up last week at a White House press briefing. In referring to stepped-up operations and more troops for Afghanistan, Press Secretary Robert Gibbs was quoted as saying "...you can't under-resource the most important part of our war on terror..."

On a much smaller stage (compared to war, peace, climate change, the economy and, of course, health care reform), there is the "reality bites" issue that is hitting pro-fed organizations. Several of the unions started out backing former Sens. Hillary Clinton, D-N.Y., or John Edwards, D-N.C., but in the end, all of the federal unions (or at least their leaders) favored candidate Obama over candidate McCain.

In addition to being genuinely opposed (right or wrong) to President Bush, the unions contended that another GOP victory would be the same as a third term for GWB.

Also, the organizations thought that they would get a much better deal under a brand new administration. And Congress.

But what (if anything) they were promised by campaign aides isn't the same—in the real world of politics—as promises that can/will be delivered by the outside candidate who overnight becomes the boss of the establishment.

Consider 2003. President Bush proposed a 2 percent federal pay raise even though the formula set out by the 1990 federal pay law (signed into law by his father) said workers were due much, much more. When he did it, unions pulled out all stops. They said he was using the economy and the war on terror as an excuse to shortchange feds. One union leader pointed out "we [federal workers] are not the enemy."

Congress quickly overrode the 2 percent raise, giving feds more—the same amount as that given to members of the military.

Zoom forward to this year. Last Monday, in fact. President Obama said he was sticking with a 2 percent civilian pay raise. To give more would hurt the economy. When he did that,

continued on page 3



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continued from page 1

Government Employees (AFGE) also came out against the change. "AFGE will continue to work toward full parity with the military through the legislative process," said John Gage, president of AFGE.

"Our position on the FY10 federal pay adjustment has not changed," NFFE's Dougan said, echoing all three unions' stands against the proposed reduction of the raise. "We will continue to petition Congress for a bigger raise than 2 percent."

To see more, go to: www.nteu.org or www.whitehouse.gov/the_press_office/Letter-from-the-President-to-the-Speaker-of-the-House-8/31/09/.

...

OPM Changes Age Requirement for Vets' Preference Eligibles

The Office of Personnel Management (OPM) last month issued a memo to human resources officers to notify them that qualified veterans' preference eligible job candidates now can apply for and be considered for vacancies that carry a maximum entry-age when age is shown not to be essential to performance of the job.

OPM issued the memo based on the Merit Systems Protection Board's (MSPB) final decision in *Robert P. Isabella v. Department of State and Office of Personnel Management*. In that case, the board found that the State Department had violated job applicant Robert Isabella's rights under the Veterans Employment Opportunities Act, because it could not show that

INSIGHT by Mike Causey

continued from page 2

unions expressed their disappointment. When last seen, members who overrode the 2 percent "peanut pay raise" of 2003 were talking about other priorities, and looking at their shoes.

Moral of the story: Where you stand depends upon where you sit!



Don't miss our discussion of weekly news topics at www.FederalSoup.com. Click on "Inside the News Forum." Look for the soup bowl on featured stories.

the maximum entry-age limit of 37 years was essential to performance of the duties of the Diplomatic Security Service special agent position for which Isabella had applied.

MSPB ordered the agency to waive the age limit for the position and process Isabella's job application. It denied his request for back pay and attorney's fees.

MSPB also found that the agency apparently violated its own policy with regard to its processing of the appellant's application. A State Department human resources specialist submitted a declaration to MSPB stating that the agency did not deem a candidate unqualified on the basis of age until such time as the candidate actually reached his or her 37th birthday, the ruling noted. However, the agency eventually conceded that it had "terminated consideration" of the appellant's application before he turned 37 "because he was only months away from his 37th birthday," the order said.

The OPM memo noted that an agency now must conduct a two-step test when considering maximum age waivers:

- An agency must first analyze the affected position to determine whether age is essential to the performance of the position.
- If the agency decides age is not essential to the position, then it must waive the maximum entry-age requirement for veterans' preference eligible applicants.

In instances where the maximum entry-age is waived, the corresponding mandatory retirement age will also be higher because it will be reached after 20 years of law enforcement officer (LEO) service for the entitlement to an immediate enhanced annuity, OPM said.


Medical and other job suitability requirements still apply, OPM said. In addition to law enforcement officers, other age-limited occupations covered by the change include firefighters, air traffic controllers, U.S. Park Police, nuclear materials couriers, and cus-

toms and border patrol officers.

The OPM memo is good news to veterans seeking civil service jobs, said federal employment law attorney Steven L. Herrick. Herrick, who serves as managing partner of the District of Columbia office of Tully Rinckey PLLC, represented Isabella before the board.

"OPM's guidance comes at a time when tens of thousands of veterans will be returning home to establish their civilian roles," Herrick said. "They will now be greeted with the opportunity and advantage they deserve to translate their military service into important positions within the federal government.

"I am pleased to see OPM finally issue the advice that many federal agencies have been waiting for in order to implement the valuable benefit that the *Isabella* decision provides to veterans," Herrick said

To see the decision, go to: www.mspb.gov/netsearch/viewdocs.aspx?docnumber=280837&version=281168&application=ACROBAT. To see the memo, go to: www.chcoc.gov/Transmittals/TransmittalDetails.aspx?TransmittalId=2484. 

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OPM Proposes Changes to Leave Rules

The Office of Personnel Management (OPM) last month proposed changes to rules governing the use of leave to care for an injured active-duty military family member. At the same time, OPM also proposed updated policies for the use of sick leave during a pandemic. The proposed rules were published in the *Federal Register* on Aug. 26.

Pandemic: OPM proposed changes to its existing pandemic regulations to allow agencies to advance as much as 30 days of sick leave to an employee when health authorities or health care providers

continued on page 4

continued from page 3

determine that the employee's presence on the job would jeopardize the health of others because of exposure to a communicable disease. An authority's determination could apply to a person who had been exposed to a disease, but had not yet contracted it.

Current regulations entitle employees to use accrued or accumulated sick leave under those circumstances. OPM also is proposing to let agencies advance a maximum of 13 days of sick leave per leave year to allow an employee to care for a family member who likewise was determined by a health provider to expose others in the community to health risks because of a communicable disease.

Leave for military families: Under regulations proposed by OPM, eligible federal employees would receive up to 26 weeks of unpaid leave to care for a family member who is injured while serving in the active-duty military or reserves. The proposed rules implement changes to the Family and Medical Leave Act (FMLA) enacted last year.

To be eligible, a federal employee must be the spouse, son, daughter, parent or next of kin of a covered servicemember with a serious injury or illness. The covered servicemember must be a current member of the armed forces, including the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty while on active duty.

The proposed regulations also would permit an employee to substitute annual or sick leave, including advanced annual or sick leave, for any part of the 26-week period of unpaid FMLA leave to care for a covered servicemember. The proposed change limits the 26 weeks of unpaid leave to any 12-month period.

Under the proposed rules, the 480-hour (12-week) limitation per year for a full-time employee on the use of sick leave to care for a family member with a serious health condition would not apply, OPM said. And, an agency could advance up to 30 days of sick leave per year for employees. Public comment deadline is Oct. 26. To see more, go to: <http://edocket.access.gpo.gov/2009/E9-20610.htm>.

Thrift Savings Plan Share Prices (As of FEND's deadline)

FUNDS	SEPT. 1	MONTH AGO	YEAR AGO
G Fund	12.9878	12.9505	12.5925
F Fund	13.1778	13.0296	12.1896
C Fund	11.7497	11.5953	14.6844
S Fund	14.5138	14.3060	18.5195
I Fund	17.0047	16.6768	20.3833
Lifecycle Funds			
L Income	13.4533	13.3721	13.4273
L 2010	14.6704	14.5697	15.0686
L 2020	14.2775	14.1173	15.5761
L 2030	14.2313	14.0503	16.0151
L 2040	14.2512	14.0517	16.5089

For rates of return and other TSP info, go to: www.FederalDaily.com/financial/TSP.htm

MSPB Lists Ways for Managers to Engage Employees

The Merit Systems Protection Board last month issued an extensive report that details a list of key strategies that federal managers can use to engage employees and improve agency outcomes.

For the study, MSPB analyzed the results of the 2007 Merit Principles Survey to narrow down specific performance management practices that encourage employee engagement. About 41,600 employees in 30 agencies participated in the 2007 survey.

The board's research showed that employee engagement was greater at agencies where senior leaders followed a set of key strategies.

"If federal employees are to invest their best efforts in serving the public, then they must be fully engaged in their work," the report said. "Our research indicates that employee engagement is higher in agencies in which senior leaders build trust with employees by aligning their words and actions, communicating openly and frequently with employees, and treating employees as valued business partners."

MSPB found that supervisors with the highest employee engagement also clearly defined their expectations and

entered strong working relationships with employees. The results of the research are detailed in the 124-page report, "*Managing for Engagement—Communication, Connection, and Courage.*"

The top management recommendation that MSPB offered is that agencies should hire with care and use the probationary period as part of the selection process. The best way to avoid performance problems is to invest the time and effort required to hire only candidates who have a high potential for success in the job, the report noted. Managers also should clearly define the technical and non-technical qualifications required for success before recruiting and selection, MSPB said.

During the hiring process, managers should provide applicants with an accurate job description and a realistic preview of the pros and cons of the position. "Use the probationary period as it was intended, as the final step in the selection process, and separate employees who do not perform well during this period," MSPB said.

Other recommendations for agency managers include:

- **Develop a strong working relationship with each employee.** MSPB noted that a central element of performance management is the ongoing dialogue between supervisors and their employees. Meeting informally

continued on page 8

The HEART Act and Qualified Reservist Distributions

The Heroes Earnings Assistance and Relief Tax (HEART) Act contains some tax benefits and incentives for federal employees who are currently serving in the uniformed services Reserves. One benefit contained in Section 114 of the HEART Act allows qualified reservists to receive a distribution—called a qualified reservist distribution (QRD)—of their unused health care flexible spending account (HCFSA). This column discusses what a QRD is, who qualifies for it, and the consequences for those who request one.

A QRD is a taxable distribution of the unused balance of a qualified reservist's HCFSA or limited expense HCFSA (LEXHCFSA). In order to fully understand what a QRD is, it is important to review the rules associated with the federal government's flexible spending account program, FSAFEDS.

All full- and part-time federal employees are eligible to participate in FSAFEDS through the HCFSA or LEXHCFSA, and/or through the dependent care FSA (DCFSA) program. Employees may set aside as little as \$250 and as much as \$5,000 per plan year (Jan. 1 through Dec. 31) that is deducted from their gross salary and put into the HCFSA or LEXHCFSA and/or the DCFSA. In any plan year, money set aside to any type of FSA is deducted on an equal basis from an employee's gross salary starting the first pay date of the calendar year. Money set aside must be spent by March 15 of the year following the end of the plan year to pay out-of-pocket dental, medical and vision expenses. Monies set aside into an FSA, but not spent by the spending deadline, are forfeited.

Those FSAFEDS participants who are also members of the Army National Guard, Army Reserve, Navy Reserve, Marine Corps Reserve, Air Force Reserve, Coast Guard Reserve, or Reserve Corps of the Public Health Service and who are called to active duty for a period of 180 days or more or for an indefinite period of time, are considered to be "qualified reservists." As such, they are eligible to request a QRD.

A qualified reservist would want to request a QRD if the individual has a balance in his or her HCFSA or LEXHCFSA and may not be able to incur eligible expenses to deplete the account by the March 15 spending deadline. Rather than lose the account balance, the account balance will be distributed to the qualified reservist. The drawback is that the distribution is considered taxable wages, and the qualified reservist will be ineligible to submit expenses for reimbursement for the remainder of the plan year.

Those qualified reservists who meet the requirements



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can request a QRD during the period beginning with the date of the order or call to active duty, and ending on the last day of the grace period for the benefit period during which the order or call to active duty occurs.

Here is an example:

Jim, a federal employee, was called to active duty on April 1, 2009. He can request a QRD from his 2009 HCFSA anytime from April 1, 2009 through March 15, 2010, the last day of the 2009 benefit period.

A QRD may be requested by going to the FSAFEDS Web site at www.fsafeds.com and clicking on **HEART Act - QRD**. The form must be filled out and signed, and faxed or mailed to FSAFEDS along with a copy of the qualified

reservist's call to duty papers. Once a QRD is requested, the qualified reservist's HCFSA or LEXHCFSA account will be closed for the remainder of the plan year. No more claims for FSA reimbursement may be made after the request for a QRD. All eligible claims for FSA reimbursement should therefore be made before a QRD request is made.

FSAFEDS payroll allotments also will cease after a QRD is requested. Re-enrollment in FSAFEDS for the same plan year in which the QRD is based is not permitted. But a qualified reservist may enroll for the next plan year during the corresponding annual open season provided that the reservist meets the normal eligibility requirements for participating in FSAFEDS.

A QRD refunds the balance of a reservist's HCFSA or LEXHCFSA as of the approval date of the request. The FSAFEDS administrator calculates this balance by taking the current amount or deposit in the HCFSA or LEXHCFSA and subtracting the amount of claims reimbursed. Here is an example.

Steve has submitted all of the eligible claims he wants reimbursed and submits his QRD on Aug. 15, 2009. His HCFSA annual election is \$4,500, his total claims paid to date is \$1,200, and his total allotment amount is \$2,000. Within a short period of time, the FSAFEDS administrator receives Steve's QRD request and Steve is notified via email of approval for his QRD. The total gross amount of Steve's QRD is \$2,000 less \$1,200, or \$800.

A QRD will be included in a reservist's federal payroll check as taxable wages. As such, the QRD will be subject to the same employment taxes as the reservist's other federal wages. A QRD will be reported on a qualified reservist's W2 that comes from the federal agency that employs the reservist.

Postal Employee Fails to Gain Removal Appeal

Thomas O. Ward, a Maintenance Mechanic with the U.S. Postal Service (USPS), won his most recent appeal of his removal from service.

Ward, who had been a full-time, preference-eligible employee, had been removed after being charged with improper conduct, and had begun a series of appeals in the wake of the charge.

In August 2008, USPS alleged that Ward had engaged in an argument with a supervisor and, specifically, had “improperly acted in a menacing and violent behavior [sic] towards” her. In the days that followed, the charges were filed and ultimately acted on by the deciding official who fired Ward.

The incident that allegedly provoked the argument began with a disagreement over the filling out of forms. Ward, who had suffered an on-the-job accident, filled out the proper accident form and had his immediate supervisor sign and date them for submission.

Ward later got a second set of forms, completed them and took them to a higher-ranking supervisor, who also signed that set of forms. But the appellant soon afterward allegedly brought a third set of forms to the same higher-ranking supervisor, and at that point the supervisor refused to complete her part of the paperwork for yet a third time, according to the official documents in the case.

The supervisor filed a complaint alleging that she could not sign the accident and leave forms yet again, because it had already been done and it would amount to falsifying official reports. The supervisor said that the appellant then “got loud,” and that the matter escalated further from there.

“I ... instructed you again to return the documents to me,” the supervisor wrote. “I told you that I needed them back. You shouted at me stating that you are not giving them back until I sign those (meaning copies of the documents). I again told you that I needed the original documents back. You yelled that you did not care if I had you taken out of the building and that you were not giving them back.”

The supervisor also said that, during the disagreement, Ward was “standing across the desk,” yet also “standing over me in a menacing position”—a posture she found “threatening.” She called the Postal Police and had the appellant escorted out of the building.

Soon afterward, Ward was removed from his post. He appealed to the Merit Systems Protection Board (MSPB), but an administrative judge (AJ) with the panel found against him.

Ward appealed a second time, to the full board. This time the board again sustained the charge—but agreed with the defendant that the AJ had erred on some points of his decision.

For example, the full board wrote that “we agree with the appellant that the deciding official impermissibly considered alleged past instances of misconduct.” Also, the

panel concluded that the AJ should have rejected the deciding official’s decision to consider alleged past misconduct when formulating the punishment for the current case of substantiated misconduct (citing *Tyson v. Postal Service*, 2008, among other cases).

Yet, these and other procedural errors were not adequate grounds, the full board concluded, to call for reducing the punishment in this case.

In the end, the MSPB affirmed both the charges and the punishment.

(*Ward v. Postal Service*, Docket No. PH-0752-09-0126-I-1, 8/31/09)

DHS Employee Loses Demotion Appeal

Georgina Small, a full-time preference-eligible employee of the Department of Homeland Security, lost her most recent appeal of her demotion from GS-12 Supervisory Mission Support Specialist to GS-11 Mission Support Specialist.

Small appealed her demotion in 2008 to the Merit Systems Protection Board (MSPB), and argued that she only withdrew her original appeal because her supervisor had misinformed her that there would be no deleterious effect on her salary. Specifically, the appellant stated, the supervisor had said that since she would be moved from GS-12, Step 2 to a GS-11, Step 9, “no wage loss” would occur.

In January 2009, Small received a letter from federal payroll officials that stated she had been “incorrectly placed at Step 9.” Instead, the letter continued, she should be at Step 4—and that, accordingly, she would be placed at that pay level. The appellant also would have to reimburse the government \$4,861 in overpayments made up to the date of the letter.

So, as her subsequent appeal pointed out, instead of her demotion leading to no negative financial consequences as allegedly promised, the move cost her dearly.

MSPB, however, identified several problems with Small’s appeal.

First and most importantly, the board noted that though the appellant claimed to have discovered the problem in January 2009, she “has not explained why she waited until June 1, 2009—almost 5 months—to file her request to reinstate her appeal.”

Second, the board noted, Small also had failed to appeal a second part of her appeal in a timely manner.

For these and other reasons, the MSPB rejected Small’s appeal to reinstate her original appeal of her demotion—a demotion that remains affirmed.

(*Small v. Department of Homeland Security*, MSPB Docket No. DE-315I-08-0204-I-1, 8/28/09)

Was Postal Worker Unfairly Fired?

“The Postal Service is a good place to work,” said Kamila Sablinsky,* who was employed for many years by the agency as a technician. “Or that’s what I always thought—until a few years ago, when I got assigned to a new and very harsh supervisor.

“I was not well, and so of course I needed some time off to get through my illness,” Sablinsky continued. “But the new boss I had wouldn’t flex on anything—she denied all my requests, leading to stress and more illness for me. Finally, she fired me, and—years later—I’m still appealing.”

“Ms. Sablinsky has exaggerated her case,” said Gerald Minor, a lawyer for the U.S. Postal Service (USPS). “She may have been ill, and her boss may well have been tough—but you can’t get your removal reversed when your agency adhered to all laws and regulations, as the Postal Service did in this case.”

FACTS: Kamila Sablinsky began working for USPS in 1980. In more recent years, she worked as a USPS data collection technician in a major metropolitan area in the Pacific Northwest.

Beginning in November 2005, Sablinsky was assigned to a new supervisor, Kara Wood. By all accounts, according to official documents in the case, Wood and Sablinsky quickly showed strain in their working relationship. Because on most days they worked at different times in the facility, the bulk of their disagreements are documented as e-mails—documents that both the Postal Service and Sablinsky have used as evidence to support their side of the case surrounding Sablinsky’s firing.

As the official documents in the case state, the “e-mail evidence and other records before the Board show severe tensions and sharp exchanges, relating primarily to [Sablinsky’s] requests for medical and dental leave, but also concerning the quality or timeliness of [the appellant’s] work.”

The intense friction between the appellant and her supervisor was reflected in many of these exchanges. In February 2006, for example, Supervisor Wood logged that Sablinsky had requested a week of leave without pay—and Wood denied the request. When Sablinsky subsequently did not report for work—for medical reasons, according to the appellant—Wood, without querying Sablinsky further, formally charged the appellant with having gone absent without leave (AWOL). In documents submitted regarding the ensuing appeals, Wood concluded the medical issues cited were not adequate to justify the requested leave, while Sablinsky insisted they were.

Several more similar exchanges occurred throughout February 2006. For instance, Wood filed a note stating, “I am wondering if [Sablinsky] has mental issues; I know she has anger problems.” In March, in a subsequent e-mail skirmish, Sablinsky responded to one of Wood’s critical e-mails in part

with “[I] guess you had to make something up, didn’t you?”

Wood mounted a case against Sablinsky in the following weeks, and filed numerous charges. In May, USPS held an investigative interview on these matters, which Sablinsky attended as required. But instead of replying to details of the charges, Sablinsky accused her supervisor of “bullying and harassing” her—and eventually walked out of the hearing, citing stress.

An official USPS note on the meeting stated that Sablinsky “appeared to be extremely unstable and delusional in her mannerisms,” and showed her supervisor “nothing but contempt.” Postal officials present judged that Wood’s charges were substantiated.

In August, a deciding official supported the Postal Service’s charges—and proposed removing Sablinsky. The official concluded that the formal charges—failure to follow instructions and disrespectful communications—were sustained, and that the appellant’s medical reasons for her absences and countercharges of harassment were not supported.

Sablinsky appealed the case to the Merit Systems Protection Board (MSPB). An administrative judge (AJ) with the panel, however, found for USPS. Sablinsky then took her case to the full MSPB. The board held a hearing in which Sablinsky offered documentation from a health care provider who, in the spring of 2006 following several appointments, noted Sablinsky’s condition as “major depressive disorder, single episode, moderate,” and that she was under treatment. Still, the MSPB rejected Sablinsky’s medical defense and upheld her removal.

The appellant took her case to the next level—the U.S. Court of Appeals for the Federal Circuit.

Was Sablinsky harassed—and unfairly removed despite having a legitimate medical condition?

DECISION: In the end, the court found for Sablinsky.

“In this case, the decision of the MSPB contains no analysis of the medical evidence submitted by [Sablinsky]—even though the medical evidence in the record is voluminous and on its face may relate to [her] inappropriate behavior,” the court wrote, in ruling for the appellant. “This lack of any analysis in the face of such evidence, coupled with the Board’s statement that [Sablinsky] failed to ‘provide any medical documentation that could justify or excuse her behavior,’ leads us to conclude that both the AJ and the full Board failed to consider the medical evidence provided by [the appellant].”

The court remanded the case to the AJ to carry out its order of readjudicating the case “in light of this evidence.” (*U.S. Court of Appeals for the Federal Circuit, Docket No. 2008-3117, 8/25/09*)

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

continued from page 4

with employees two to three times a week is a good start.

- **Establish regular progress/feedback sessions.** Managers should schedule regular meetings with each employee to discuss the employee's progress on current assignments and any obstacles that may be impeding success, provide feedback and recognition, explain new assignments and communicate high expectations for performance, the report said. Monthly is usually a minimum time frame.
- **Become a model employee yourself.** Managers should set an example for employees by requesting feedback from them and by sharing with them feedback received from upper management.
- **Create opportunities for employee growth.** Supervisors

should conduct annual or semiannual assessments of each employee's strengths and development needs, the report said. They also should provide development opportunities for all employees—including both specific training needed for the current job and wider skill development.

"Consistent, honest communication with employees should begin with on-boarding programs when employees first enter an organization," the report said, "and continue with frequent opportunities for employees to participate in dialogue about the organization with their leaders."

To see the report, go to: www.msps.gov/netsearch/view-docs.aspx?docnumber=437591&version=438697&application=ACROBAT.

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