

IN THE MATTER OF:

Employee
and
DEPARTMENT OF THE ARMY
Agency.

LAST CHANCE AGREEMENT

The Department of the Army (Agency) and _____ (Employee) agree the following is a complete statement of the terms of this Last Chance Agreement (Agreement), reached freely and in good faith, in complete resolution of the Employee’s pending removal from the Federal service, and in consideration of the mutual promises made below.

RECITALS

R.1. Employee is employed as a (Title/PP/Series/Grade), assigned to the United States Army (Organization Name), _____

R.2. On (Date), (Name of proposing official) _____ proposed Employee be removed from his position and from the Federal service.

R.3. The removal action was based on two charges. The first charge, with forty-nine (49) specifications, alleged Unauthorized Absence. The second charge, with eight (8) specification, alleged Providing False Information on Timecard.

R.4. On (Date), after considering the Employee’s oral response and all evidence in the case, the Deciding Official determined both of the charges and all of their specifications were supported by a preponderance of the evidence and removal was an appropriate penalty. However, based upon the Employee’s length of service, his technical capabilities, and his expressed remorse for his actions, the Agency has offered to hold the Employee’s removal from Federal service in abeyance upon the following terms and conditions. The Employee has agreed to this offer.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency which are hereby acknowledged, the parties hereto agree as follows:

1. The above recitals are made part of this Agreement.
2. The parties specifically acknowledge neither is to be regarded as a prevailing party for any purpose.
3. The parties mutually agree this Agreement does not constitute an admission of liability, fault or error by the Agency, its employees, or representatives. This Agreement also does not constitute an admission of any violation of Title VII of the Civil Rights Act of 1964 and 1991, as amended; the Age Discrimination in Employment Act of 1967, as amended; the Rehabilitation Act of 1973, as amended; or any other Federal or State statute or regulation.

I. Agency Obligations

4. In exchange for the promises made by the Employee in paragraph 5 of this Agreement, the Agency agrees as follows:

- a. The Agency will hold in abeyance the implementation of the decision to remove Employee from his position and the Federal service for a period of three (3) years from the effective date of this Agreement in return for the Employee's compliance with the terms of this Agreement as outlined in paragraph 5, below.
- b. If the Employee engages in any form of misconduct during the three (3) years after execution of this Agreement, the Agency may reinstate the removal being held in abeyance. The Agency may also, at its election, propose a separate disciplinary action (if appropriate) for new misconduct and rely on the misconduct held in abeyance as a prior offense to support appropriate disciplinary action in accordance with Army regulations. The misconduct that may form the basis to reinstate the removal action held in abeyance does not have to be related to the Employee's previous misconduct, described in the Recitals to this Agreement, above.
- c. If the Employee successfully complies with the terms of this Agreement for three (3) years from this Agreement's effective date, the Agency will cancel the removal action. However, the thirty (30) day suspension without pay for misconduct, as described in paragraph 5 below, will remain on the Employee's official personnel file and employment record.

II. Employee Obligations

5. Employee agrees as follows:

a. Employee acknowledges his conduct identified in the Notice of Proposed Removal was wrong and constitutes a very serious breach of his responsibilities and the public's trust in him as a Federal employee. Employee also acknowledges the present charge of misconduct is particularly egregious as it arises out of a breach of trust related to Employee's certification of time and attendance.

b. Employee agrees to serve a thirty (30) day suspension without pay due to his unauthorized absence and providing false information on timecard. The suspension will be served on non-consecutive days as follows: _____, _____

c. Employee agrees the decision to remove will be held in abeyance for a period of three (3) years from this Agreement's effective date.

d. Employee agrees for the term of this Agreement, Employee will refrain from engaging in any conduct that would warrant formal disciplinary action. One instance of such conduct during the term of this Agreement constitutes a breach of this Agreement. Employee specifically agrees he will comply with all supervisory direction with regard to his duties. In any case where Employee has doubts as to the appropriate procedures to follow, he will immediately contact his supervisory chain or, as appropriate, subject matter experts, for any necessary clarification.

e. Employee agrees if he breaches this Agreement in any way, Employee's removal, or lesser punishment at the discretion of the Agency, from his position and from the Federal service, for the reasons specified in the removal decision being held in abeyance, would be warranted and such action would promote the efficiency of the Federal service.

f. Employee agrees his signature on this Agreement constitutes full and complete agreement on all matters between himself and the Agency as of the date of signature. Employee understands if a decision to remove him were made effective, he would have had rights to appeal to the Merit Systems Protection Board (MSPB) within thirty (30) days of the effective date of removal. Employee also understands he could have been represented by a representative in filing an appeal. Additionally, Employee understands he could have filed an appeal under the (____ Grievance System) , and, if he felt he was being subjected to unlawful discrimination, he could have filed an Equal Employment Opportunity (EEO) complaint. By entering into this Agreement, Employee waives his right to pursue administrative or judicial action against the Agency and its officials, representatives, agents, and employees, former officials, or former employees, in any forum, including but not limited to, the MSPB, the Equal Employment Opportunity Commission (EEOC), the Office of the Special Counsel (OSC), any Army appeal, any State or Federal court, or any State or Federal administrative agency of competent jurisdiction, concerning all matters or disputes between himself and the Agency as of the date of signature, whether known or unknown, including but not limited to any decision, up to and including removal, based on the found charges in the Notice of Proposed Removal.

g. Employee agrees in the event the Agency proceeds to remove the Employee during the three (3) year period of this Agreement as a result of Employee's breach of this Agreement, Employee waives any entitlement to advance written notice of the Agency's decision to implement the removal decision, and the removal/action may be effected immediately without prior notice. In consideration for the Agency holding the decision to remove him in abeyance, Employee waives all rights to appeal his removal (or lesser action), if effected under this Agreement, to the MSPB. Furthermore, Employee waives any and all rights to pursue administrative or judicial action in any forum concerning the matters raised in this action and agrees these matters will not be made the subject of future litigation including, but not limited to, appeal of his removal/action to the MSPB, filing an appeal under any applicable Army procedures, filing an EEO complaint about the matters covered by this Agreement, making a complaint with the OSC, and/or filing lawsuits in Federal and/or State courts.

6. Employee's signature on this Agreement constitutes the withdrawal and cancellation of any and all complaints, grievances, and/or appeals, if any, filed by the Employee up to, and including, the date of this Agreement and which are now or may be pending in any forum whatsoever.

7. Employee acknowledges and agrees he was advised of his rights in the Agency's Notice of Decision dated _____ to file an appeal or complaint regarding the Agency's removal action. He also acknowledges he has had adequate opportunity to seek the advice and consent of counsel prior to entering into this Agreement.

8. Employee knowingly and voluntarily acknowledges the following:

a. Employee and his counsel were provided a full opportunity to review, participate in and question the provisions of this Agreement.

b. Employee will be solely responsible for payment of any attorneys' fees incurred by him relating to this matter and/or any claim against the Agency.

c. Employee understands and agrees to all of the requirements and conditions of this Agreement and voluntarily waives the rights specified above.

d. Employee further acknowledges and agrees he is under no duress, coercion, or mental impairment, and desires, by his own and voluntary act, to enter into this last chance agreement and be bound by its terms.

9. If Employee believes the Agency has failed to comply with the terms of this Agreement, he shall notify the Agency in writing, of the alleged noncompliance, within thirty (30) days of the date on which Employee knew, or should have known, of the alleged noncompliance. Employee will specifically forward any allegations of noncompliance to _____ Counsel (Labor), _____, _____, and to _____, Human Resource Specialist, Civilian Personnel Advisory Center (CPAC), _____. If neither has responded to Employee in writing within thirty (30) calendar days of receipt of his allegation of noncompliance, or if the Employee is not satisfied with the attempts to resolve the matter, the Employee may attempt to pursue the matter in an appropriate forum he deems appropriate.

III. Joint Representations

10. The parties agree, in the event it is determined one or more provisions of this Agreement is contrary to law or regulation or is otherwise unenforceable, only that term or terms shall be considered null and void and all other provisions shall remain in full force and effect.

11. The effective date of this Agreement will be the latest date a signing party, below, signs it. The parties agree this Agreement can be circulated for signature amongst the parties via facsimile and/or electronic mail, and further agree the parties' signatures transmitted via

facsimile, photocopy or electronic replication shall render this Agreement as enforceable as if the Agreement contained original signatures.

12. The parties agree this Last Chance Agreement constitutes the full and complete agreement between the parties, there are no other agreements, either expressed or implied, oral or written, and the parties' signatures hereunder indicate they have read this Agreement, understand and agree to its terms, and intend to be bound by the same. No other promises or Agreements will be binding unless reduced to writing and signed by both parties.

13. For purposes of enforcement or interpretation, this Agreement shall be treated as having been drafted jointly by the parties hereto.

14. The parties acknowledge the Department of Defense Central Adjudication Facility (DoD CAF) has the independent authority to determine Employee's eligibility to maintain a security clearance and the loss of a security clearance might serve as a separate and distinct basis for Employee's suspension or removal from Federal service. Nothing in this Agreement shall be interpreted to affect the DoD CAF process (including any resulting employment action against Employee arising out of DoD CAF's actions) and nothing in this Agreement shall preclude Employee from appealing any decision by DoD CAF to the Defense Office of Hearings and Appeals (DOHA) and/or the Personnel Security Appeals Board (PSAB).

15. The terms of this Agreement will not establish any precedent nor will the Agreement be used as a basis by Employee or any representative organization as justification for similar terms in any subsequent case.

16. The parties warrant and represent they have had adequate time to review and carefully read this Agreement, know and understand the contents contained within, and have signed this Agreement as their own voluntary acts.

FOR THE EMPLOYEE:

FOR THE AGENCY:

Date: _____

Date: _____

ATTORNEYS:

Counsel for Employee

Counsel for the Agency

Date: _____

Date: _____