

CHAPTER 9
PREDISCIPLINARY HEARINGS, LEAVE CREDITS, AND APPEALS

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CHAPTER 9

PREDISCIPLINARY HEARINGS, LEAVE CREDITS, AND APPEALS

1. PREDISCIPLINARY HEARINGS.

a. Purpose. A predisciplinary hearing (PDH) provides the affected employee with an opportunity to respond prior to the effective date of an adverse action, rejection during probation, nonpunitive termination, or medical termination per Government Code Section 19253.5. The hearing allows the employee the ability to provide information to the PDH officer, which potentially could mitigate culpability or lessen the proposed punishment.

b. Role of the Predisciplinary Hearing Officer. The role of the PDH officer is to provide an unbiased, objective review of the proposed personnel action, the supporting materials, the employee's response, and any mitigating factors. In addition, the hearing officer is responsible for the following:

(1) To determine if, by a preponderance, there is sufficient evidence within the investigative file to support the misconduct charged in the notice.

(2) To determine whether the proposed penalty is reasonable, based upon:

(a) The harm to public service. Harm may include adverse publicity, harm to departmental reputation, impact on other employees, financial impact, and civil liability.

(b) Any mitigating factors presented by the affected employee or their representative. It should be noted that the employee would have been afforded the opportunity during the investigatory process to present exculpatory and mitigating information to investigators for inclusion in the investigative file. Accordingly, a PDH officer may wish to question the reason for introducing such materials during the PDH rather than during the investigation.

(c) The likelihood the misconduct will reoccur (e.g., the employee's past progressive discipline and subsequent response; rehabilitative efforts including drug and/or alcohol treatment; utilization of the Employee Assistance Program and/or counseling; the employee's attitude, remorse, or defiance).

(3) To provide a recommendation the penalty be sustained, modified, or rescinded.

c. Selection of the Predisciplinary Hearing Officer.

(1) Requirements. In accordance with Section 52.6, Title 2, of the California Code of Regulations, the PDH officer shall be, at a minimum, the rank of Assistant Chief. The PDH officer should not be assigned to the same Division, have been directly involved in the affected employee's internal investigation, or have participated in the disciplinary decision.

(a) If the PDH officer determines they do not meet the impartiality standard, they should recuse themselves and another PDH officer shall be selected.

(2) Availability. If selected, the PDH officer must ensure their availability during the timeframe specified in the notice of the affected employee.

(3) Exceptions. Should the need arise for the PDH officer to be at a rank higher than Assistant Chief, an Assistant Commissioner, designee, or individual knowledgeable of the PDH process who is employed outside of the Department, such as a Chief of Police, may be utilized.

d. Hearing Procedures. Following service of the notice, the employee may request a PDH to respond to the charges and submit evidence to show why the action should be modified, reduced, or rescinded. The employee's reply may be oral or written. The oral response may be in person or over the telephone. The written response may be submitted by mail, fax, or e-mail. An employee's representative may present the employee's response at the PDH on the employee's behalf.

(1) Scheduling a Predisciplinary Hearing.

(a) It is the employee's responsibility to schedule the PDH and/or provide a response prior to the end of the response period, as designated in the notice. In rare instances, the PDH period may be extended beyond the 10 business days for uniformed employees, 10 business days for managerial (uniformed and nonuniformed) employees, and 10 business days for nonuniformed employees.

(b) The specific time and place for the PDH is at the discretion of the PDH officer but can occur at any time during the response period and should be within normal business hours. Upon mutual agreement between the PDH officer and the employee, the PDH may occur during the employee's assigned shift, if the employee's assigned shift is outside of normal business hours.

(c) Since compensation is permitted for an employee's attendance at the PDH, an employee's working days should be considered when scheduling the PDH, if possible.

(d) There is no set time limit for the PDH, rather sufficient time shall be provided to allow the employee and/or representative to fully respond to the charges and present their case.

(2) Hearing Protocol. The PDH is not intended to be a formal process involving the presentation of evidence, formal objections to evidence, or the calling and cross-examination of witnesses. The PDH officer may ask questions in order to clarify facts related to the employee's response or offer of mitigating circumstances.

(a) The PDH officer does not need to make a decision at the conclusion of the PDH. The matter may be taken under submission and/or the PDH officer may conduct further inquiries, if necessary.

(3) Recording. Audio recordings of a PDH are not required. However, if an employee requests to record a PDH with a personally owned recording device, the PDH officer shall ensure the PDH is concurrently recorded using a departmental recording device. When recording a PDH, it shall always be done with the employee's knowledge. Recordings shall be entered into evidence in accordance with Highway Patrol Manual 70.1, Evidence Manual.

(4) Representation. The employee is entitled to have a representative of their choice, within reason, when meeting with the PDH officer. The employee's representative may be a union representative, an attorney, or any other individual, provided the representative is not a party to the investigation (e.g., victim, witness, subject). Since the PDH is not adversarial in nature, and given the limited role of the PDH officer, it is generally not appropriate to have other personnel present to represent the Department's case.

(5) Settlement Proposals.

(a) Although the employee or representative may bring up a proposal for settlement of the punitive action during the PDH, the PDH officer shall not negotiate or agree to a settlement. The PDH officer should instead note the terms of the proposal and advise the employee or their representative, the Office of Legal Affairs (OLA) will provide a response to their proposed settlement.

(b) If a request is made by the employee during the PDH to use leave credits to satisfy the penalty, the PDH officer should advise the employee such a request must be made through the employee's commander in

accordance with this chapter. The PDH officer should not negotiate or agree to the use of leave credits.

e. Predisciplinary Hearing Officer Review.

(1) Responsibility. The PDH officer shall become familiar with the investigation by reading the notice and reviewing the accompanying investigative file, in addition to any response submitted by the employee. The review of the written materials should precede an in-person PDH with the employee and/or their representative.

(2) Findings. At the conclusion of the hearing, the PDH officer should take time to consider the matter before rendering a decision. The desire to take the matter under submission should be communicated to the employee and/or their representative during an in-person hearing. The PDH officer should base the decision on the facts presented and not engage in negotiations with the employee or the representative.

f. Documenting the Decision.

(1) No Response. If the employee fails to submit a formal response or fails to appear at their PDH during the dates specified on the notice, the PDH officer shall document the “No Response” on a confidential memorandum. See Annex A for a sample Predisciplinary Hearing Decision—No Response memorandum.

(2) No Modification. If the PDH officer believes the investigation supports the allegations, no new issues of merit are raised, and the penalty appears appropriate, then the original penalty shall not be modified. The PDH officer shall document the “No Modification” decision on a confidential memorandum. See Annex B for a sample Predisciplinary Hearing Decision—No Modification memorandum.

(3) Modification Recommended. If the PDH officer believes the penalty should be modified or rescinded, immediate notification shall be made to the Office of the Commissioner to discuss the factors in support of the modification or rescission. The Commissioner, or their designee, will make the final determination.

(a) Modification or Rescission Denied. If the recommended modification is denied, the PDH officer shall document the decision on a Predisciplinary Hearing Decision—No Modification memorandum.

(b) Modification or Rescission Approved. If the recommended modification is approved, the PDH officer shall document the “Penalty

Modification” or rescission on a confidential memorandum. See Annex C for a sample Predisciplinary Hearing Decision—Penalty Modification memorandum.

- 1 The Office of Internal Affairs (OIA) will complete an amended notice, which will be forwarded to the employee’s command for service to the employee in accordance with Chapter 8, Review, Approval, and Closing Documentation; of this manual.

g. Serving the Employee. The PDH officer will forward the appropriate confidential memorandum to the employee’s commander for personal service to the employee within the following timeframes:

(1) Employee’s Written Response to the Notice. If the employee submitted a written response to the notice, the PDH decision memorandum shall be served to the employee within 14 calendar days of receipt of the employee’s response, or prior to the effective date of the penalty, whichever comes first.

(a) An employee’s written response to the notice shall be attached to the PDH decision memorandum.

(2) Employee’s Verbal Response to the Notice. If the employee’s response was provided in person or over the telephone, the PDH decision memorandum shall be served to the employee within seven calendar days of the employee’s response, or prior to the effective date of the penalty, whichever comes first.

(a) Upon service of the PDH decision memorandum, the employee’s commander, or designee, shall complete a CHP 7C, Declaration of Service.

(b) If personal service to the employee is not possible, the PDH decision memorandum shall be mailed by certified mail with a return receipt requested. Service must be completed before the effective date of the adverse action. The date of mailing will be the service date. The commander or designee shall complete a CHP 7C.

(3) Distribution.

(a) The signed PDH decision memorandum and the completed CHP 7C shall be scanned and e-mailed to OIA for inclusion in the final investigative file.

(b) The signed original PDH decision memorandum shall be provided to the employee.

2. LEAVE CREDITS. While available to all departmental employees, excluding cadets, the use of leave credits in lieu of serving an adverse action penalty, or portion thereof, requires specific authorization from applicable collective bargaining unit agreements.

a. Process. Employees, excluding cadets, who are the subject of an adverse action, may request a corresponding quantity of available leave credits be forfeited to satisfy an assessed penalty. Upon approval, leave credits may be used to satisfy any adverse action penalty involving a suspension or step reduction. In exchange for approval of this request, the employee shall agree to waive all rights to appeal the adverse action.

b. Limitations.

(1) Suspension or Step Reduction—Five Days or Less. Employees may use leave credits to satisfy the entire suspension period or step reduction.

(2) Suspension or Step Reduction—Six Days or More. Employees may use leave credits to satisfy up to one-half of the suspension period or step reduction.

NOTE: For each month of step reduction to be satisfied by leave credits, eight hours of the requested leave credits will be deducted. Any deviation from these penalty offsets will be granted only in extreme circumstances and only after prior approval is obtained from the Office of the Commissioner.

c. Request Procedures.

(1) Timeframe for the Request. The request to use leave credits shall be made by the employee prior to the conclusion of the PDH period. Failure to submit the request prior to the end of the PDH period will disqualify the use of leave credits to satisfy all or part of the suspension or step reduction.

(2) Documenting the Request. The request shall be made by using a CHP 7D, Request to Use Leave Credits, and must be submitted directly to the employee's commander. See Annex D for a sample CHP 7D.

(a) The CHP 7D must indicate the type and quantity of leave credits to be used to fulfill the request. Leave credits which may be used for the penalty offset are limited to compensating time off, vacation time, annual leave, and personal leave, or any combination of whole-hour credits.

(3) Representation. Employees are entitled and encouraged to discuss the implications of the request to use leave credits with their chosen representative or other counsel.

d. Commander Responsibility. After receiving the request, the employee's commander shall verify the employee has sufficient leave credits available to cover their request. Once verified, the employee's commander, or designee, shall sign and date the CHP 7D.

(1) The command shall forward a PDF of the completed CHP 7D to OIA for processing.

(2) Commanders shall ensure the involved employee does not remain on suspension for the time being satisfied with leave credits. For example, in a 10-day suspension for which the employee has been approved to use five days (40 hours) of leave credits, the employee would be away from work for only five days.

e. Office of Internal Affairs Responsibility. Upon receipt of a completed CHP 7D, OIA will prepare a memorandum detailing the employee's penalty and the use of leave credits, if any. The CHP 7D will be attached to the memorandum and forwarded to the State Personnel Board (SPB) with a copy to Human Resources Section, Personnel Transaction Unit (PTU); and to the appropriate Division, command, and involved employee. The memorandum serves as the authorization for PTU to deduct the allotted leave credits.

3. STATE PERSONNEL BOARD APPEALS.

a. Overview. The SPB is a quasi-judicial body which reviews the punitive actions taken by all state agencies. An employee may appeal an adverse action, rejection during probation, or nonpunitive termination, to SPB, regardless of whether the employee provided a response during their PDH. In an SPB appeal, a hearing may be held before an administrative law judge (ALJ). The SPB will make a determination to sustain, modify, or revoke the employee's penalty.

(1) Adverse Action Appeals. During an adverse action appeal, the Department bears the burden of proof to show, by a preponderance, the following:

(a) The evidence in the investigative file proves the charge(s) listed in the Notice of Adverse Action by a preponderance of the evidence.

(b) If the proven acts or omissions constitute a legal cause for discipline.

(c) Whether the penalty imposed by the Department is just and proper for the proven misconduct.

(d) In accordance with GC 19590, managerial employees bear the burden of proof in non-dismissal adverse action cases. Managerial employees must show the charges listed in the Notice of Adverse Action were based upon fraud, bad faith, or a lack of substantial evidence.

(2) Rejection During Probation Appeals. Rejections during probation are part of the selection and examination process. They are not considered discipline or adverse action. The employee's appeal in response to rejection during probation may be heard by an ALJ in an evidentiary hearing. However, the facts set forth in the Notice of Rejection During Probation will be presumed true, and the employee will bear the burden of either disproving the allegations and/or proving the rejection was based on fraud, discrimination, or bad faith.

(3) Nonpunitive Termination Appeals. During a nonpunitive termination appeal, the Department will bear the burden of proving the employee failed to meet a requirement for continuing employment. The employee will bear the burden of proving the nonpunitive termination was improper.

(4) Representation During Appeal. An employee may be self-represented or represented by legal counsel, a union representative, or any other person.

b. Filing Deadlines.

(1) Adverse Action. An employee may file an appeal with the SPB Appeals Division no later than 30 calendar days after the effective date of a Notice of Adverse Action.

(2) Rejection During Probation. A rejected, probationary employee may file an appeal with the SPB Appeals Division no later than 15 calendar days after the effective date of the rejection.

(3) Nonpunitive Termination. An employee may file an appeal with the SPB Appeals Division no later than 30 calendar days after the effective date of a Notice of Nonpunitive Termination.

c. Office of Legal Affairs Responsibility. If an employee files an appeal with SPB, OLA will be notified in writing by the SPB Appeals Division. The OLA is responsible for litigating and/or managing the Office of Attorney General's litigation of the hearing.

d. Failure to Appear. Failure of the employee to appear for the hearing at the time and place designated by SPB shall usually be deemed a withdrawal of appeal, and the Department's decision shall be final.

e. State Personnel Board Decision. Upon a decision by SPB to rescind or modify the penalty, OIA will make notification to the command and Division.

(1) Should SPB decide to rescind or modify the penalty, the Office of the Commissioner will decide whether to appeal the decision to the Superior Court. The employee may also appeal the decision by following the SPB process to petition for a rehearing.

4. SETTLEMENTS AND STIPULATIONS. Departmental representatives are not authorized to negotiate and/or settle on penalty levels with an employee or their representative at an SPB hearing without approval from the Commissioner. All stipulations shall be drafted by OLA or the Attorney General.

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ANNEX A

PREDISCIPLINARY HEARING DECISION—NO RESPONSE

State of California

Transportation Agency

Memorandum

C O N F I D E N T I A L

Date: [Date]
To: [Area Name]
Attention: [Employee Name], ID [#]
From: DEPARTMENT OF CALIFORNIA HIGHWAY PATROL
[Division of PDH Officer]
File No.: [Area #].[PDH Officer ID #]
Subject: PREDISCIPLINARY HEARING DECISION – NO RESPONSE

On [Date], you were served with a Notice of [Adverse Action, Rejection During Probation, Non-Punitive Termination]. You were provided an opportunity to present a response on or before [End Date of PDH Period] at 1700 hours. However, no response was provided or received.

Due to the fact I have not received a response the penalty imposed shall remain unchanged. However, if you wish to pursue this matter further, you are entitled to appeal your [Adverse Action, Rejection During Probation, Non-Punitive Termination] to the State Personnel Board.

[Name]
Assistant Chief
[Division]

cc: Office of Internal Affairs
[Division Employee Assigned]

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CHP 51WP (Rev. 06/2013) OPI 078



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ANNEX A

PREDISCIPLINARY HEARING DECISION—NO RESPONSE (*continued*)

[*Employee Name*], ID [#]
Page 2
[*Date*]

I hereby acknowledge receipt of this memorandum.

Employee's Signature ID Date

Service information:

Supervisor's Signature ID Time

ANNEX B

PREDISCIPLINARY HEARING DECISION—NO MODIFICATION

State of California

Transportation Agency

Memorandum

C O N F I D E N T I A L

Date: [Date]

To: [Area Name]

Attention: [Employee Name], ID [#]

From: **DEPARTMENT OF CALIFORNIA HIGHWAY PATROL**
[Division of PDH Officer]

File No.: [Area #].[PDH Officer ID #]

Subject: PREDISCIPLINARY HEARING DECISION – NO MODIFICATION

On [Date], you were served with a Notice of [Adverse Action, Rejection During Probation, Non-Punitive Termination]. On [Date] I [met with, received correspondence, received a telephone call] you [and/or your representative, (Name of Representative)] regarding your Predisciplinary Hearing. During the hearing, you [your representative] had the opportunity to present your response to the Notice of [Adverse Action, Rejection During Probation, Non-Punitive Termination], and put forth any mitigating factors. The meeting was not a formal evidentiary hearing, and as such, any conflicting evidence was not considered.

I have reviewed the Notice of [Adverse Action, Rejection During Probation, Non-Punitive Termination], including the allegations, supporting documents, and the measure of discipline proposed. After due consideration of the matter, including all provided documentation as well as your response to the charges, I am satisfied the alleged offense(s) occurred, reasonable evidence exists to believe you committed the act(s) of misconduct, and the discipline imposed is not excessive. The information and/or opinion presented in your response did not raise any issues which would either give cause for further investigation or mitigation. Accordingly, I recommend the [Adverse Action, Rejection During Probation, Non-punitive Termination] against you be imposed without modification. However, if you wish to pursue this matter further, you are entitled to appeal your [Adverse Action, Rejection During Probation, Non-Punitive Termination] to the State Personnel Board.

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ANNEX B

PREDISCIPLINARY HEARING DECISION—NO MODIFICATION (*continued*)

[*Employee Name*], ID [#]
Page 2
[*Date*]

[*Name*]
Assistant Chief
[*Division*]

cc: Office of Internal Affairs
[*Division Employee Assigned*]

I hereby acknowledge receipt of this memorandum.

Employee's Signature ID Date

Service information:

Supervisor's Signature ID Time

ANNEX C

PREDISCIPLINARY HEARING DECISION—PENALTY MODIFICATION

State of California

Transportation Agency

Memorandum

C O N F I D E N T I A L

Date: [Date]

To: [Area Name]

Attention: [Employee Name], ID [#]

From: **DEPARTMENT OF CALIFORNIA HIGHWAY PATROL**
[Division of PDH Officer]

File No.: [Area #].[PDH Officer ID #]

Subject: PREDISCIPLINARY HEARING DECISION – PENALTY MODIFICATION

On [Date], you were served with a Notice of [Adverse Action, Rejection During Probation, Non-Punitive Termination]. On [Date] I [met with, received correspondence, received a telephone call] you [and/or your representative, (Name of Representative)] regarding your Predisciplinary Hearing. During the hearing, you [your representative] had the opportunity to present your response to the Notice of [Adverse Action, Rejection During Probation, Non-Punitive Termination], and put forth any mitigating factors. The meeting was not a formal evidentiary hearing, and as such, any conflicting evidence was not considered.

I have reviewed the Notice of [Adverse Action, Rejection During Probation, Non-Punitive Termination], including the allegations, supporting documents, and the measure of discipline proposed. After due consideration of the matter, including all provided documentation as well as your response to the charges, I am satisfied the alleged offense(s) occurred and reasonable evidence exists to believe you committed the act(s) of misconduct. However, the information and/or opinion presented in your response raised issues which gave cause for mitigation of the penalty. The Commissioner, or their designee, has approved the penalty modification from [original penalty] to a [modified penalty]. Accordingly, you will be served with an amended Notice of [Adverse Action, Rejection During Probation, Non-Punitive Termination] with the modified penalty. However, if you wish to pursue this matter further, you are entitled to appeal your [Adverse Action, Rejection During Probation, Non-Punitive Termination] to the State Personnel Board.

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ANNEX C

PREDISCIPLINARY HEARING DECISION—PENALTY MODIFICATION (*continued*)

[*Employee Name*], ID [#]
Page 2
[*Date*]

[*Name*]
Assistant Chief
[*Division*]

cc: Office of Internal Affairs
[*Division Employee Assigned*]

I hereby acknowledge receipt of this memorandum.

Employee's Signature ID Date

Service information:

Supervisor's Signature ID Time

ANNEX D

CHP 7D, REQUEST TO USE LEAVE CREDITS

STATE OF CALIFORNIA DEPARTMENT OF CALIFORNIA HIGHWAY PATROL		Print Button
REQUEST TO USE LEAVE CREDITS		C O N F I D E N T I A L
CHP 7D (New 1-13) OPI 031		
TO (AREA NAME) ①	FROM (EMPLOYEE NAME) ②	I.D. NUMBER ③
I request that the <input type="checkbox"/> ④ -working-day suspension or <input type="checkbox"/> ⑤ -month step reduction assessed in my recent Adverse Action be satisfied through the use of my accumulated leave credits. I request this penalty be offset by deducting the following credit hours:		
<input type="text"/> ⑥	Vacation	
<input type="text"/> ⑦	Annual Leave	
<input type="text"/> ⑧	Compensated Time Off	
<input type="text"/> ⑨	Personal Leave Program	
<input type="text"/> ⑩	TOTAL	
I agree that, if this request is approved either in whole or in part, I waive any and all rights to appeal in this matter, and further waive any claims in federal or state court or any other administrative forum that may arise out of this matter. I make this request freely and voluntarily, and understand that it is subject to approval of the Commissioner of the California Highway Patrol.		
EMPLOYEE'S SIGNATURE ⑪	EMPLOYEE'S PRINTED NAME ⑫	DATE ⑬
REPRESENTATIVE'S SIGNATURE ⑭	REPRESENTATIVE'S PRINTED NAME ⑮	DATE ⑯
<i>I have verified that the employee has sufficient leave credits to satisfy this request.</i>		
AREA COMMANDER'S SIGNATURE ⑰	DATE ⑱	
COMMENTS ⑲		
ROUTE THROUGH CHANNELS FOR SIGNATURE, AS REQUIRED, AND FORWARD TO OFFICE OF INTERNAL AFFAIRS FOR PROCESSING		
Chp7D_0714.pdf		

ANNEX D

CHP 7D, REQUEST TO USE LEAVE CREDITS (*continued*)

CHP 7D INSTRUCTIONS

1. Name of command to which employee is assigned.
2. Full name of employee submitting request.
3. ID number of employee submitting request.
4. Entering the number of days (e.g., 5, 10, 20) of the suspension penalty into this box will select the associated box (if item 4 is selected, item 5 will be unavailable).
5. Entering the number of months (e.g., 2, 5, 25) of the step-reduction penalty into this box will select the associated box (if item 5 is selected, item 4 will be unavailable).
6. Number of hours requested to be removed from the vacation bank to offset disciplinary penalty.
7. Number of hours requested to be removed from the annual leave bank to offset disciplinary penalty.
8. Number of hours requested to be removed from the compensated time off bank to offset disciplinary penalty.
9. Number of hours requested to be removed from the personal leave program bank to offset disciplinary penalty.
10. Total number of hours requested to be removed to offset the disciplinary penalty (sum of items 6 through 9).
11. Signature of requesting employee.
12. Printed full name of requesting employee.
13. Drop down date when requesting employee places signature in item 11.
14. Signature of requesting employee's representative, if applicable.
15. Printed full name of requesting employee's representative, if applicable.

ANNEX D

CHP 7D, REQUEST TO USE LEAVE CREDITS (*continued*)

16. Drop down date, if applicable, when requesting employee's representative places signature in item 14.
17. Signature of commander verifying employee has sufficient leave credits available to satisfy the request.
18. Date the employee signed item 17.
19. Insert any comments.

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