TECHNICIAN PERSONNEL REGULATION
No. 715

HEADQUARTERS
DEPARTMENTS OF THE ARMY AND THE AIR FORCE
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VOLUNTARY AND NON-DISCIPLINARY ACTIONS

This regulation covers voluntary actions initiated by the technician and those actions initiated by management for nondisciplinary reasons. FPM chapter 715 is replaced in its entirety by this TPR.

		Paragraph	Page
Chapter 1.	VOLUNTARY ACTION		
	Resignation	1-1	1
	Change to lower grade	1-2	2
	Optional retirement	1-3	2
	Abandonment of position	1-4	3
Chapter 2.	NON-DISCIPLINARY ACTION		
	Loss of military membership	2-1	4
	Failure to meet a requirement of the position	2-2	4
	Military appointment requirements	2-3	6
	Termination of general officers	2-4	6
	Management-directed reassignment	2-5	6
	Transfer of function	2-6	7
	Furlough for 30 days or less (22 workdays)	2-7	7
	Decrease in the hours of duty for a part-time technician	2-8	7
	Enforced leave	2-9	8

CHAPTER 1. VOLUNTARY ACTION

1-1 RESIGNATION

a. Resignation is a voluntary termination of employment. A technician can resign at any time; advance notice is not required. Management may ask for a reasonable period of notice to allow for a replacement or work adjustment but may not set an earlier or later date than the date selected by the technician.

b. A technician who plans to resign should complete an SF 52 or submit the resignation in writing, signed and dated, with an effective date and reasons for resigning. When the resignation is made orally, management should try to obtain written confirmation of the resignation from the technician. If this is not possible, the person to whom the resignation request was made prepares a memorandum for the record to document the request including reasons given by the technician, the date, and names of any witnesses. Relevant documents are attached to the SF 52 used to process the resignation. Technicians should be encouraged to give specific reasons for resigning since these reasons are used to determine future employment eligibility and entitlement to various benefits including unemployment compensation. They also provide management with helpful information in accessing employment trends.

c. Management cannot demand a technician's resignation. However, when a technician is faced with an adverse action, management can advise the individual of the option to resign. The effective date of the resignation dictates whether or not remarks about the adverse action can be placed on the resignation SF 50. A technician who resigns rather than face the adverse action process forfeits his/her adverse action appeal rights. To make a well-informed decision, a technician should be referred to the SPMO for rights and benefits information.

d. A technician may request to withdraw a resignation before it becomes effective. Requests to withdraw must be in writing; verbal requests are followed up in writing. Within the Department of Defense there are two circumstances where management <u>may</u> deny withdrawal. These are (1) when the technician's position has been or is scheduled to be abolished; or (2) when a commitment of the position to be vacated has been made to someone else (e.g. an individual is selected for the projected vacancy thru the merit placement process and has given notice to his/her current employer). If a technician's request to withdraw a resignation before it becomes effective is denied, management must provide written explanation of its decision and advise the technician of the right to request an appellate review or administrative hearing (see TPR 752 for a description of both appeal processes). Management has the burden of establishing the validity of its reasons for denying withdrawal.

e. A technician who has resigned and then alleges that the resignation was not voluntary must be advised by the SPMO of his/her right of appeal. The technician can request an appellate review or administrative hearing (see TPR 752 for a description of both appeal processes). The burden is upon the technician to prove by a preponderance of the evidence[1] the involuntariness of the action.[2]

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[1]Considering the record as a whole, the evidence is more convincing to the State Adjutant General than the opposing evidence.

[2]Case law holds that free choice is undermined to the extent that employees experience duress, time pressure, or mental incompetence at the time of their decision. Several decisions hold that a resignation is deemed involuntary if free choice is compromised (obtained by deception, coercion, duress, time pressure or intimidation).

1-2. CHANGE TO LOWER GRADE

a. A technician can request a voluntary change to lower grade at any time. Such requests are normally made for personal reasons and are usually in the technician's own best interest. A request for a voluntary change to lower grade must be in writing with all facts and circumstances surrounding the action documented. A voluntary change to lower grade at the request of the technician does not carry a right to pay retention under 5 U.S.C. 5363(a)(3).

b. Management cannot demand that a technician request a change to lower grade. However, when a technician is faced with an adverse action, management can advise the individual of the option to voluntarily request a change to lower grade. To make a well-informed decision, a technician should be referred to the SPMO for rights and benefits information.

c. A technician may request to withdraw his/her voluntary request for change to lower grade before it becomes effective. Requests to withdraw must be in writing (signed and dated); verbal requests are followed up in writing. There are two circumstances where management may deny withdrawal. Both are explained in paragraph 1-1d. If a technician's request to withdraw a request for change to lower grade before it becomes effective is denied, management must provide written explanation of its decision and advise the technician of the right to request an appellate review or administrative hearing (see TPR 752 for a description of both appeal processes). Management has the burden of establishing the validity of its reasons for denying withdrawal.

d. A technician who alleges that his/her change to lower grade was not voluntary will have his/her allegations processed in accordance with the procedures established in paragraph 1-1e.

1-3. OPTIONAL RETIREMENT

a. Application for optional retirement is a voluntary expression of a technician's desire to retire. The effective date is specified in the retirement application (SF 2801) provided the eligibility requirements are met on that date.

b. Management cannot demand that a technician retire. However, when a technician is faced with an adverse action, management can advise the individual of the option to retire. To make a well-informed decision, a technician should be referred to the SPMO for rights and benefits information.

c. A technician may request to withdraw an application for retirement before it becomes effective. Requests to withdraw must be in writing; verbal requests are followed up in writing. Within the Department of Defense there are two circumstances where management may deny withdrawal. These two circumstances are explained in paragraph 1-1d. If a technician's request to withdraw an application for retirement before it becomes effective is denied, management must provide written explanation of its decision and advise the technician of the right to request an appellate review or an administrative hearing (see TPR 752 for a description of both appeal processes). Management has the burden of establishing the validity of its reasons for denying withdrawal.

d. A technician who has retired and then alleges that the action was not voluntary will have his/her allegations processed in accordance with the procedures established in paragraph 1-1e.

1-4. ABANDONMENT OF POSITION

a. A technician can be removed for abandonment of position if he/she fails to report for work within a reasonable time (usually 10 calendar days). Management must attempt to ascertain the technician's intentions (document all attempts). If no intention of returning can be established, the SPMO processes the removal action and mails it to the technician's last known home address. The removal is effective the last day the technician was at work or the last day of approved leave, whichever is later.

b. Abandonment of position is a voluntary termination from technician employment and as such will not require the 30-day notification established by 32 U.S.C. 709(e)(6). See footnote 4, paragraph 2-1, of this regulation.

c. A technician who asks to return to duty after an abandonment of position is effected will be advised by the SPMO of his/her rights of appeal as outlined in paragraph 1-1e. The burden is upon management to prove that the technician abandoned his/her position.

CHAPTER 2. NON-DISCIPLINARY ACTION

2-1. LOSS OF MILITARY MEMBERSHIP

a. Federal law requires excepted service personnel to maintain membership in the National Guard as a condition of continued employment and requires prompt termination upon loss of membership in the Active Army or Air National Guard.[3] The one exception to the requirement for prompt termination upon loss of military membership is in pending disability retirement claims. (A technician who has lost military membership may be retained until OPM's adjudication is received.)

b. A technician must be notified in writing of his/her termination at least 30 calendar days before the termination date.[4] Termination from technician employment should coincide with separation from the National Guard since waiting until the military separation date to issue the notice would not be in keeping with the intent of Congress. The following rules apply when computing the 30-day notice: (1) day means calendar day, (2) calendar day is the 24-hour period between 12 midnight and 12 midnight, (3) the 30-day period begins the day after the notification is given directly to the technician or, if mailed, 5 days after the date mailed as shown on the certified mail return receipt, and (4) the last day of the 30-day period may not be a nonwork day. There is no prohibition against effecting this action during the period 15 December through 3 January.

c. Notification is required even if the technician voluntarily relinquishes Guard membership. A technician has the option of waiving the 30-day notice (waivers must be in writing). Preparation and issuance of the notice is an SPMO responsibility.

2-2. FAILURE TO MEET A REQUIREMENT OF THE POSITION

a. There are many situations that involve failure to meet a requirement of the position. The following represent the more common ones:

(1) Failure to maintain compatible military assignment. For example, a technician fails a training course required for his/her military assignment and is moved militarily causing an incompatible assignment. Or, an individual must be moved militarily because of poor performance resulting in an incompatible assignment.[5] In both examples, management may request a waiver from NGB, move the technician to a compatible assignment, or terminate the technician for failure to maintain a compatible military assignment.

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[3] 32 U.S.C. 709(b) ... a technician... shall, while so employed, be a member of the National Guard....

32 U.S.C 709(e)(1) a technician who is employed in a position in which National Guard membership is required as a condition of employment and who is separated from the National Guard... shall be promptly separated from his technician employment....

The Supreme Court of the United States, in the case of Tennessee v. Dunlap, 426 U.S. 312 (1976), found no constitutional or due process defect in this arrangement.

[4] 32 U.S.C. 709(e)(6) a technician shall be notified in writing of the termination of his employment as a technician and such notification shall be given at least thirty days prior to the termination date of such employment.

[5] Martelon v. Temple, 747 F.2d 1348 (10th Cir. 1984), cert. denied 105 S.Ct. 2675 (1985)

(2) Failure to maintain military appointment requirement for the position. For example, a technician holding an "enlisted only" position is appointed to officer ranks.[6] See paragraph 2-3.

(3) Failure to maintain military rank required for the position. For example, a technician supervisor creates military rank inversion after being demoted militarily

(4) Failure to maintain flying status.

(5) Failure to maintain a driver's license.

(6) Failure to maintain current qualifications as instructor pilot.

(7) Failure to meet the physical standards required for ARNG crew chief positions.

(8) Revocation of clearance to carry firearm.

(9) Failure to maintain security clearance required by technician position and/or compatible military assignment.

(10) Failure to remain qualified in the Personal Reliability Program.

(11) Failure to complete required training.

(12) Physically unable to perform technician duties efficiently and/or safely.[7] For example, a heavy mobile equipment repair leader is physically prohibited by his/her physician from climbing.

b. If a technician can no longer meet a requirement of his/her position, management must take appropriate action. If the situation is of a temporary nature, management reviews the portion of the duties the technician will be able to continue performing. Then management decides if the organization can withstand curtailment of duties for that temporary period of time. Answers to these questions will help management decide among its options of: (1) leaving the technician in his/her position for the time period involved, (2) detailing the technician, (3) reassigning the technician, (4) offering the technician a change to lower grade, or (5) terminating the technician.

c. If the failure to meet a requirement of the position is permanent, management must remove the technician from the position either by reassignment, change to lower grade, or termination.

d. Decisions made in each case must be documented with well-founded rationale. No decisions are made without SPMO coordination since placement could involve such things as compatibility, qualifications, training, pay, and technician assistance program. Regardless of the alternative selected, the SPMO must advise the technician in writing.

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[6] TPR 300(302.7) permits the adjutants general to make an exception to this requirement when the military appointment requirement (officer, warrant officer, enlisted) of a technician's position changes.

[7] Regulations on nondiscrimination for handicapped individuals require that agencies make reasonable accommodation to "qualified handicapped employees". Applicable EEOC regulations should be reviewed before proceeding with this type of action.

e. If management determines a change to lower grade or reassignment is necessary, it must provide the technician a reasonable amount of time to accept or reject the offer. The written notification must inform the technician that should he/she choose not to accept the offer, termination will be effected. The date of termination included in the letter to the technician must provide for a 30-day notice. See paragraph 2-1b for rules on computing the 30-day notice.

2-3. MILITARY APPOINTMENT REQUIREMENTS

Military appointment requirements (officer, warrant officer, enlisted) are specified on position descriptions. As outlined in paragraph 2-2a(2), a technician who fails to maintain the military appointment requirements must be removed from the position. Normally, this occurs when an enlisted technician is appointed to warrant officer or officer grades. Therefore, military technicians need to be advised as early as possible about the effects such military appointment will have on his/her technician employment. The SPMO is responsible for issuing a notice informing the military technician that -

(1) Receipt of the military appointment will result in termination from technician employment.

(2) Unless selected for a position designated as warrant officer or officer, termination from technician employment will occur upon receipt of temporary Federal recognition (ARNG) or upon graduation from AMS (ANG).

The SPMO must ensure the 30-day notice requirement established by 32 U.S.C. 709(e)(6) is met. See paragraph 2-1b for rules on computing the 30-day notice.

2-4. TERMINATION OF GENERAL OFFICERS

A military technician promoted to general officer cannot continue in technician employment unless he/she meets the criteria outlined in TPR 300(302.7). Therefore, the SPMO must issue a notice as early as possible to advise the military technician that: (1) promotion to general officer will result in termination from technician employment, and (2) termination will occur the day before receipt of Federal recognition for ARNG and not later than 14 days following the date of U.S. Senate confirmation of appointment to brigadier general for ANG. The SPMO must ensure the 30-day notice requirement established by 32 U.S.C. 709(e)(6) is met. See paragraph 2-1b for rules on computing the 30-day notice.

2-5. MANAGEMENT-DIRECTED REASSIGNMENT

a. When management reassigns a technician, it moves him/her to another position with the <u>same</u> grade and pay. A management-directed reassignment does not mean a change to lower grade with retained grade/pay. It does include the movement of a technician from a position with potential for noncompetitive promotion to a position without that potential (e.g., a GS-7 technician may be reassigned to another GS-7 position even if the current position is a target GS-9). There must be a valid reason for a management-directed reassignment. For example: management's needs for the technician's talents elsewhere; action taken to avoid a RIF; or to eliminate disruption and conflict where personal squabbles are affecting technician work relationships.

b. The SPMO is responsible for providing the technician written notification of management-directed reassignment. As a minimum, this notification must: (1) explain why the management-directed reassignment is taking place (must be in sufficient detail to show that the action is for bona fide reasons), (2) provide the effective date for reassignment, (3) give the technician a reasonable amount of time (normally 10 calendar days) to

accept or reject the reassignment, (4) explain that if the offer is rejected, the notification letter constitutes a 30-day notice of termination, and (5) provide benefit information applicable to the technician if termination occurs.

2-6. TRANSFER OF FUNCTION

The NGB reduction-in-force regulation, TPR 300(351), establishes procedures for transfer of function. The SPMO is responsible for providing notification of the transfer. This notice must: (1) explain why the transfer of function is occurring (2) provide the effective date for the transfer, (3) give the technician a reasonable amount of time (normally 10 calendar days) to accept or reject the transfer, (4) explain that if the offer is rejected, the notification letter constitutes a 30-day notice of termination, and (5) provide benefit information applicable to the technician if termination occurs.

2-7. FURLOUGH FOR 30 DAYS OR LESS (22 WORKDAYS)

a. Management has an inherent authority to furlough any or all of its technicians, if there are legitimate reasons for doing so. Situations under which furlough can be used include lack of work, lack of funds, or unforeseeable circumstances such as breakdown in equipment, natural disasters, sabotage, or sudden emergencies requiring immediate curtailment of activities. NGB-TN must be notified prior to initiating furlough actions for any reason.

b. Collective bargaining obligations and negotiated agreement provisions on furlough procedures must be honored. If exception to negotiated procedures are required by management's authority to act in an emergency, labor organizations should be informed, in advance, of the nature and extent of the emergency.

c. The SPMO is responsible for preparing and issuing written furlough notices. Such notices may be addressed to groups of technicians, but a copy must be provided to each technician a minimum of 24-hours before the effective date of the furlough <u>or</u> sent to the technician's address of record as soon as possible. Such notices will include: (1) the reason for the furlough, (2) estimated length of the furlough (a furlough period can be for 30 consecutive calendar days or 22 nonconsecutive workdays; e.g., 1 day per week for 22 weeks), and (3) right to have the furlough action reviewed by the State Adjutant General.

d. A technician who requests review of the furlough action submits his/her objections to the SPMO. The State Adjutant General takes whatever action he/she deems appropriate to thoroughly review the technician's objections along with management's need for the furlough. A final decision is then issued by the State Adjutant General summarizing the objections and the method of review and concluding with the reasons for the final decision. (Management is responsible for establishing the appropriateness of the furlough.) The decision must also advise the technician that there is no administrative appeal to the State Adjutant General's final decision.

(NOTE: Furloughs in excess of 30 calendar days (22 workdays) must be processed in accordance with TPR 300(351).)

2-8. DECREASE IN THE HOURS OF DUTY FOR A PART-TIME TECHNICIAN

a. Part-time employment is covered in FPM chapter 340 and TPR 300(340). Before management can decrease the specific numbers of hours a part-time technician has been hired to work on his/her prearranged scheduled tour of duty, it must provide the technician written notification of the decrease. As a minimum, the notification must be given to the technician in advance of the

pay period in which the change is to occur. It must include the reason for the decrease and a right to have the action reviewed by the State Adjutant General. The notification letter must be cleared by the SPMO before issuance.

b. A technician who requests review of the decrease in hours submits his/her objections to the State Adjutant General. The State Adjutant General takes whatever action he/she deems appropriate to thoroughly review the technician's objections along with management's rationale for the decrease. A final decision is then issued by the State Adjutant General summarizing the objections and the method of review and concluding with the reasons for the final decision. (Management is responsible for establishing the appropriateness of the decrease). The technician must also be advised that there is no administrative appeal to the State Adjutant General's final decision.

2-9. ENFORCED LEAVE

a. Management has the right to require a technician to leave the worksite when it is determined that: (1) the technician is not ready, willing, and able to perform assigned duties; and/or (2) the technician's continued presence is highly undesirable or presents an immediate threat to Government property or the well being of the technician, co-workers, or the public. The following three examples illustrate this management right.

(1) A technician reports to work without required safety equipment. At that point the technician is not ready and able to perform assigned duties. A supervisor can place the technician on annual leave, compensatory time-off, or LWOP until he/she reports back to work with the required safety equipment.

(2) A technician appears for work in what the supervisor reasonably determines to be an unsafe state due to illness, alcohol abuse, medication, controlled substance abuse, or other causes. Attempts to have the technician explain the condition are unsuccessful. The supervisor determines that the technician's continued presence creates an immediate threat to Government property, the technician, and/or fellow co-workers. The supervisor gives the technician an option of being taken home or to a family physician or having a family member called. If he/she refuses to choose or is unable to choose, the supervisor selects the best alternative. When the technician reports to work the next day, the supervisor tells him/her that unless there is a reasonable explanation, the leave status for the non-duty time will be LWOP. If there is a reasonable explanation (for example, reaction to new medication that can be supported by a doctor's statement), the supervisor can give the technician the option of using annual leave, compensatory time-off, or sick leave. The technician is then advised that no further action will be taken or that the incident is still being appraised and disciplinary or adverse action could result.

(3) A technician is in a rage, disrupting the entire shop (throwing objects and cursing). Attempts to calm the technician are rebuked. The supervisor determines the technician's continued presence would be highly undesirable. The technician is told he/she is being placed in a LWOP status and to immediately leave the worksite and return when calmed down. The technician regains composure and reports to work the next day. The supervisor tells the technician that unless there is a reasonable explanation, the LWOP status from the previous day will not be changed. If the explanation alters

the supervisors position on the LWOP (for example, technician first learned of a family member's serious illness), the technician can be offered the option of taking appropriate leave. The technician is advised that no further action will be taken or that the incident is still being appraised and disciplinary or adverse action could result.

b. Enforced leave may not be continued once management determines that the technician is ready, willing, and able to perform assigned duties or that the immediate emergency is resolved.

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