



HUMAN RESOURCE OFFICE
TECHNICIAN/AGR ADMINISTRATIVE INSTRUCTION

Number 11-001

31 March 2011

West Virginia Army and Air National Guard Policy and Instructions for Employee Assistance Programs

1. Purpose. This publication implements the Employee Assistance Program (EAP) of the West Virginia Army and Air National Guard. It relates to situations where the employee's ability to perform the job is affected by personal problems. These may stem from a variety and combination of sources such as substance abuse, marital/family problems, legal, financial, or health concerns, or emotional traumas. This plan details appropriate supervisory actions to assist the employee in returning to successful job performance. This TAAI is intended to replace WVTPR 792, 1 July 1991.

2. References:

- a. Public Law (PL) 91-616, The Comprehensive Alcohol Abuse and Alcohol Prevention, Treatment and Rehabilitation Act of 1970.
- b. PL 92-255, The Drug Abuse Office and Treatment Act of 1972
- c. PL 92-282 and PL 92-244 urging confidentiality
- d. 5 U.S.C. Chapter 79 and Section 7904; 5 CFR Part 792
- e. Technician Personnel Supplement 792-2, NGB's Technician Assistance Program, 5 Sep 78

3. Background. In recent years, more information has become available to help individuals manage stressful life situations. However, not everyone is fully equipped with the ability to use these skills. This may be the result of feeling so overwhelmed by various problems that an employee feels helpless and frustrated. When this occurs, supervisors may notice any one of several symptoms. These include a reduction in the quality of work, frequent, unplanned absences or tardiness, inability to get along with co-workers, irritability, depression, change in physical appearance or behavior, among other changes. By the time these symptoms are apparent, the problem may be fairly well developed. Employees often forget, in the midst of the trauma, that there are resources available to help them overcome their circumstances. This type of isolation occurs when the individual feels that their problems are too personal and often too painful to address. However, most health insurance packages offered by the West Virginia National Guard do cover counseling and substance abuse rehabilitation costs. Substance abuse and counseling are included because studies have concluded that they are conditions which can be treated as any other which impacts job performance. PL 91-616 and PL 92-255 require Federal Agencies to develop and maintain preventive treatment and rehabilitation referral services to their employees. Specifically, these laws state that "no person may be denied or deprived of Federal civilian employment or a Federal, professional, or other license solely on the grounds of prior abuse of drugs or alcohol."

4. Policy.

a. The goal of the Adjutant General is mission accomplishment. As morale and productivity relate to this goal, it is incumbent on management and command to be responsive to situations where personal concerns affect the individual's ability to perform the vital tasks required for mission accomplishment.

b. The West Virginia National Guard Employee Assistance Program (EAP) has the following specific objectives:

(1) That the agency recognizes alcoholism/drug abuse and mental health problems as treatable health problems.

(2) That the agency is concerned with the employee's medical/behavioral problems as soon as they begin to affect an individual's job performance or the efficiency of the service.

(3) When management has reason to believe criminal conduct is directed toward or potentially harmful to the person or property of others, management's first obligation is to the safety and health of the person or property of others, then to the employee involved.

(4) That no employee will have his or her job security or promotion opportunities jeopardized by requesting counseling or referral assistance.

c. This agency will not condone any illegal drug activity. Any employee possessing, using, selling, or distributing illicit drugs or a controlled substance on government premises or in a duty status will be considered for disciplinary or adverse actions for misconduct under TPR 752.

d. Consumption of alcohol while on duty is inappropriate and may result in disciplinary or adverse action for misconduct under TPR 752.

e. Public Law 91-616 and Public Law 92-255 state, no person may be denied or deprived employment solely on the grounds of prior alcohol abuse, alcoholism, and or drug abuse. Likewise, no employee will have their job security or promotional opportunities jeopardized by their request for assistance or referred rehabilitation. This does not prohibit management from taking appropriate action for failure to maintain the requirements of the position as outlined in TPR 715.

5. Employee's Role and Responsibilities:

a. It is the employee's primary responsibility to maintain satisfactory or above satisfactory work performance. If personal problems are the cause for lowered work performance or conduct problems it is the employee's responsibility to seek the necessary help to overcome their personal problems in order to restore their performance or conduct within job and regulatory guidelines.

b. If an employee recognizes that a personal problem has the potential to interfere with their work performance they may initiate a "self referral" to the Employee Assistance Program (EAP). This simply means that he/she can contact the Employee Assistance Program Coordinator (see Attachment A) and get assistance confidentially.

c. If the employee's personal problem has already affected their work performance or conduct the supervisor may direct the employee to see the EAP Coordinator. This is called a "supervisor referral."

d. Whether an employee is a self-referral or a supervisory referral to the EAP Coordinator, it is their decision to enroll into the EAP program and get the necessary help. If the employee does not respond to offered assistance and their performance does not improve, the employee will be subjected to corrective action.

6. Supervisor's Role and Responsibilities: The role of the supervisor is crucial in the Employee Assistance Program. The supervisor is in the best position to identify changes in personality or work performance, and usually knows the extent of absenteeism or tardiness that negatively affects the efficiency of the organization. The supervisor should never try to diagnose or counsel a troubled employee. The role of the supervisor is to detect and document deteriorating work performance or workplace efficiency and to counsel an employee based on those problems.

a. Maintain confidential personal notes on all specifics where an employee's work performance or behavior fails to meet expected standards, where their individual pattern of performance seems to be deteriorating, or where conduct becomes disruptive to the efficiency of the workplace (See Attachment A on Possible Patterns of Performance Deterioration.) Notes should be specific about day, time, place, and nature of incident. A brief record of each occurrence and patterns of deteriorating job performance can be maintained on the employee's Supervisor Brief.

b. When corrective action becomes unavoidable, consult HRO then conduct a corrective-counseling interview with the problem employee. See Attachment B on How to Confront an Employee with Performance/Conduct Related Problems. The supervisor will issue the Supervisory Referral Form Letter located in Attachment C. They should have the employee sign receipt of the referral letter and keep a copy in the secured work folder. A copy will be provided to the employee and the original will be forwarded to the EAP Coordinator, along with a Supervisory Referral Form.

c. If, after a Supervisory Referral has been given, the employee refuses assistance through the EAP, and performance continues to be unsatisfactory, contact the EAP Coordinator to develop a "Last Chance Agreement." This agreement provides a firm choice to accept assistance through the EAP and cooperate in any treatment identified by an evaluation/assessment or be subject to removal based on unacceptable work performance. In the case of the "Last Chance Agreement," the EAP Coordinator will determine the specific terms, some of which may include a general provision for attending a recovery program. Last Chance Agreements are only given when all other progressive disciplinary actions have failed. A person cannot be required to sign a Last Chance Agreement. A Last Chance Agreement, once signed by the employee, halts termination action for one year. However, if the person violates one or more of the terms, management will proceed with the termination action.

d. If an employee requires treatment or counseling for their personal problems, leave will be granted in accordance with appropriate leave policies and procedures, including the Family Medical Leave Act (FMLA). In case of a low or non-existent leave balance, the employee may request leave without pay or advanced leave. Advanced sick leave may be granted in cases where complete return to work is expected and will be considered on a case by case basis.

e. In circumstances where management has a reasonable belief that criminal activity is involved or where there is an imminent threat of physical violence, supervisors will immediately contact the Law Enforcement and inform the EAP Coordinator or the Human Resources Officer. A supervisor may decide to "Enforce Leave", as authorized under TPR 715, when there is evidence of threats or unsafe acts. The supervisor must also be mindful of striking a balance between the safety of other employees and monitoring the work place climate to reduce the potential of panic.

7. Employee Assistance Program Coordinator's Responsibilities:

Works under the direction of the HRO and will oversee the program as follows:

- a. Implement the program IAW with this guidance and all updated policy guidance from NGB, internal Employee Assistance Plan, and Standard Operating Procedures.
- b. Coordinate all training and orientation for the work force through the HRO to ensure that all members of the work force are aware of the program.
- c. Coordinate and conduct training for managers and supervisors concerning the procedures of the program.
- d. Establish liaison with local counseling, community education, and recovery programs.
- e. Counsel individuals about the program, refer individuals to local resources, and follow-up as needed.
- f. Recommend and prepare "Last Chance Agreements" when appropriate, and explain the significance to supervisors and the affect to individuals. Follow up in this case includes contacting the rehabilitation/medical facility where treatment is being sought, requesting verification of individual's progress in the program, and advising the supervisor if the individual violates the terms of the agreement.
- g. Maintain all records and information in a confidential manner.
- h. Log all time spent and other relevant information as required for submission of reports to National Guard Bureau.

8. Administrative Considerations:

- a. Persons who enroll in a daytime treatment program will be granted leave in accordance with appropriate leave policies and procedures, including FMLA, for purposes of treatment.
- b. Disclosure of information.
 - (1) Information may be disclosed without the consent of the individual ONLY under the following circumstances:
 - (a) Only to medical personnel in the event of a bona fide medical emergency and only to the extent necessary at the time.
 - (b) In the conduct of financial or management audits by qualified personnel. However, such personnel will not identify any particular individual or the facts of their case in any reports or evaluations, or in any way disclose identities.
 - (c) Under an authorized court order rendered of a competent jurisdiction showing good cause.
 - (d) Necessary to prevent loss of life, injury, or damage to property.
 - (2) Disclosure with consent of the employee is still subject to strict confidentiality and will be made directly from the medical or treatment facility to the EAP Coordinator (the facility will administer disclosure statements prior to releasing any information to the EAP). In other circumstances, the employees may elect to disclose information and can either use the information procedure as provided by the facility or may choose to complete the attached form (Atch E) which details purpose, extent of disclosure, name of employee giving consent, and name of program/facility providing treatment.
 - (3) Authorized receipt of disclosure. Information will be disclosed only to the Human Resources Officer and/or the EAP Coordinator. Supervisors or co-workers of troubled employees are not authorized recipients of information of this nature.

(4) Maintenance of Records.

(a) Supervisory Records concerning EAP cases are maintained in the same confidential manner, as are other employee records.

(b) Records containing medical or rehabilitation treatment information will be maintained by the EAP Coordinator.

(c) Official Personnel File will not contain information relating to an individual's involvement with the EAP, or any aspect of the substance abuse or rehabilitation, except as related to specific disciplinary or separation actions that are issued from the employee's refusal to correct behaviors, conduct, or performance problems as identified by the supervisors.

(5) Rehabilitation Expenses. At present, the West Virginia National Guard is not able to provide in-house or contracted counseling or rehabilitation services. The EAP is an information and referral activity to assist employees in seeking the qualified assistance they require to return to full and satisfactory work performance. The various health benefits packages offered by the organization typically have provisions for substance abuse and counseling programs. Some pay full or partial costs as described at the time of enrollment. There are also other resources available in the community on a sliding fee scale according to the individual's ability to pay. While the EAP may recommend various facilities or resources, the individual selects a program of his or her own choosing. The West Virginia National Guard is not responsible for any costs related to treatment of this nature.

9. Program Coordination:

For an effective program, all pertinent staff functions will effect coordination, particularly in cases where an individual may have multiple-referral needs, such as legal and financial, among many other possible combinations. However, information disclosed to various staff entities will be based on the extent that the problem relates to the subject area. Should you have any questions or have requests for additional information, please contact the Employee Assistant Program Coordinator in the Human Resource Office, 1703 Coonskin Drive, Charleston WV 25311-1085; Commercial: (304) 561-6430 DSN: 623-6430.



CRAIG E. LAMBERT
LTC, EN, WVARNG
Human Resource Officer

Attachment A

POSSIBLE PATTERNS OF PERFORMANCE DETERIORATION

A-1. ABSENTEEISM.

- a. Unauthorized leave.
- b. Excessive sick leave.
- c. Monday and/or Friday absences.
- d. Repeated absence of 2-4 days.
- e. Excessive tardiness (e.g., Monday mornings or returning from lunch.)
- f. Leaving work early.
- g. Peculiar or increasingly improbable excuses for absences.
- h. Unsatisfactory performance of duty.

A-2. HIGH ACCIDENT RATES.

- a. On the job
- b. Off the job, which affects work performance on the job.

A-3. DIFFICULTY IN CONCENTRATION.

- a. Job takes more time than usual.
- b. Hand tremors while concentrating.

A-4. CONFUSION.

- a. Difficulty recalling instructions and details.
- b. Increasing difficulty in handling complex assignments.
- c. Difficulty recalling own mistakes.

A-5. SPORADIC WORK PATTERNS.

- a. Very high and very low production, differential increase.
- b. Coming to work in an obvious abnormal condition.
- c. Missing deadlines.
- d. Making mistakes due to inattention or poor judgment.
- e. Wasting materials.
- f. Making bad decisions.
- g. Complaints from individual's co-workers.
- h. Improbable excuses for poor performance.

A-6. EMPLOYEE RELATIONS ON THE JOB.

- a. Overreacts to real or imagined criticism.
- b. Wide variance in morale.
- c. Avoids co-workers.
- d. Uncooperative.
- e. Borrows money from co-workers continuously.

REMEMBER: Most employees exhibit some of these job performance problems occasionally. It is the repeated pattern of these problems over a period of time that should be noted and documented.

Attachment B

HOW TO CONFRONT A TROUBLED EMPLOYEE

B-1. BE AWARE of your own expectation. How much irresponsibility will you tolerate? What is acceptable and unacceptable to you?

B-2. DOCUMENT all absenteeism, poor job performance, or observe behaviors. Specific descriptions are necessary.

B-3. BE CONSISTENT – Don't tolerate more with one employee than you would with another because you feel sorry or inadequate.

B-4. AVOID LABELING – Don't try to diagnose, stick with what you can observe.

B-5. BASE THE CONFRONTATION ON JOB PERFORMANCE – not alcoholism, drug addiction, schizophrenia, etc. . .

B-6. BE FIRM – But tell the employee you are there to help. Try to gain their trust.

B-7. BE HONEST – Don't hedge; speak with authority. The employee will respect you for it.

B-8. ACCEPT NO EXCUSES – If you accept excuses for failure, you don't really care and the employee will know it. If the employee uses excuses refer back to the specific job criteria you expect them to meet.

B-9. ACKNOWLEDGE THE PROBLEM – Try to get the employee to acknowledge the problem, then, work from there.

B-10. SET UP A PLAN FOR IMPROVEMENT. Establish a progress slope so that you both know if the employee is making progress or not. Evaluate performance periodically together.

B-11. DON'T MAKE VALUE JUDGEMENT – Better to say, "I have observed (*specific behaviors*), and it appears to be effecting you ability to accomplish you job by (*describe specific deficiencies or shortcomings*)", than to say, "I think you are wrong to do . . ." or "I think you have a problem with . . .". Rely on specific job performance criteria.

B-12. DON'T MORALIZE. Avoid the appeal to "should" and "shouldn't", this can create hostility. Better to tell the employee what you expect.

B-13. NEVER ASK WHY do you do this or that, or why do you drink so much, etc. The "why" provides a basis for excuses and give the employee an avenue to try to avoid responsibility. Remember, the employee is always responsible for their own behavior.

B-14. TRY TO GET THE EMPLOYEE to tell what the problem is, even if you think you know, avoid saying so. If the employee resists, indicate your willingness to get involved or indicate your concern and desire to get the problem resolved for their sake.

B-15. IF THE EMPLOYEE SAYS THEY ARE "SICK" – or makes other excuses, let them know that there is no excuse for prolonged impaired job performance; it is their responsibility to seek help.

B-16. DON'T GET "BOXED IN" – Hold fast to your contention that it's the employee's responsibility to improve job performance by seeking help. Yours is a therapeutic and legitimate argument.

B-17. USE THE UNION – Don't let the employee play you against higher management and/or the union – you're not in the middle here - NO LEGITIMATE UNION EVER PRAISED POOR JOB PERFORMANCE. Ideally, the employee should eventually be confronted by both the supervisor and the union representative together. Many times the union can be of valuable assistance in motivating the employee. A combined labor/ management effort increases the employee's chances for improvement.

B-18. GET A COMMITMENT – Set down specific work criteria, which the employee agrees to work for during a certain time period. DOCUMENT the goals and expectations agreed upon. This looks a lot like a Performance Improvement Plan (PIP).

B-19. DON'T MAKE IDLE DISCIPLINARY THREATS – Follow through with your warnings. (Use specific time intervals - day, week, certain number of shifts, etc. . .)

B-20. WHEN CONFRONTING a problem drinker or other troubled employee, identify specific behavior when you discuss job performance. A legitimate and effective approach may be one similar to the following: "It is possible that personal problems may contribute to your impaired job performance. Therefore, I strongly urge you to contact the EAP Coordinator, a medical department, or a local agency to get some assistance. Whether you do or not, I will meet with you again (at a specific time and day) to consider more severe disciplinary action if there is no significant improvement."

B-21. TAKE THE RESPONSIBILITY TO INTERVENE - Don't be afraid to get involved. You have a legitimate right to intervene when an employee's behavior is interfering with job performance. Remember, it is highly probable that a troubled employee's performance (both on and off the job) will improve when confronted constructively and consistently. It is a fact that a troubled employee may get worse if the situation is ignored or the employee is just warned occasionally.

Attachment C

SAMPLE LETTER

MEMORANDUM FOR:

SUBJECT: Employee Assistance Program (EAP)

1. As we have discussed, your recent performance and/or behavior has caused me concern for your overall well being, as well as how it impacts mission accomplishment. I have given you the attached information regarding the Employee Assistance Program (EAP) and how it may be of benefit to you.

2. You are hereby instructed to contact the Employee Assistance Program Coordinator in the Human Resources Office, 304-561-6430 or DSN 623-6430, to enter the EAP. Should you elect to enter into the EAP any disciplinary or adverse action against you will be held in abeyance while you are actively enrolled, participating in the program, and making progress. However, if your work performance/behavior does not improve, or you fail to cooperate, adverse or disciplinary action will continue.

SUPERVISOR

I acknowledge receipt of the foregoing information this _____ day of _____, 20____.

EMPLOYEE

Encl ATTACHMENT D
EAP Information Letter

EMPLOYEE ASSISTANCE PROGRAM

WHAT IS THE EMPLOYEE ASSISTANCE PROGRAM?

The Employee Assistance Program is a referral service. It is not a counseling service, nor does it provide treatment. Using the referral services of EAP is not a condition of employment. Depending upon the nature of the problem; employees seeking assistance are referred to a program, service, or agency within the community for appropriate counseling or assistance. The West Virginia National Guard values each employee and believes that with appropriate help problems can be addressed and treated.

WHAT IS THE PURPOSE OF THIS PROGRAM?

The primary purpose of the program is to help employees cope with personal problems which negatively affect their lives and which might intrude upon their jobs. Emotional stress, family disintegration, financial and legal difficulties, alcoholism, drug abuse, and marital disruption impair not only an employee's personal life, but also workplace productivity. While the purpose is to assist individuals, it also increases the ability of employees to completely perform the job they were hired to do and to retain those employees who may be experiencing personal or job-related problems.

HOW DO YOU ENTER THE EAP?

If you recognize that a personal problem has the potential to interfere with your work performance you may initiate a "self referral," which simply means that you can contact the Employee Assistance Program Coordinator and get assistance confidentially. If your work performance has been affected, your supervisor has the authority to direct you to the EAP Coordinator, which is called a "supervisory referral." If referred by your supervisor, it usually is an indicator that disciplinary or adverse action is being considered. If this is true, entering the EAP program may hold any disciplinary/adverse action in abeyance. If you are successful in bringing your work performance or behavior within standards any proposed disciplinary/adverse action may be dismissed, however, if you work performance/behavior does not improve the proposed disciplinary/adverse action will continue.

WHAT HAPPENS ONCE YOU ENTER THE EAP?

Whether you are a self-referral or a supervisory-referral, you do not have to enroll in the Employee Assistance Program. Some employees choose to seek assistance on their own. Those who choose to enroll in the EAP will be authorized to use leave granted in accordance with appropriate leave policies and procedures, including leave under the Family Medical Leave Act (FMLA).

Attachment E

SUBJECT: Release of Patient Information

I, _____ do hereby authorize the Employee
(Employee's Name)

Assistance Program Coordinator to disclose the following information (extent/and or nature):

TO: _____
(Name of program, organization, referral agency, supervisor, or person to whom disclosure is made)

For the purpose of: _____

I understand that my records are protected under the Privacy Act of 1974, and the Federal Civilian Employee Alcoholism and Drug Abuse Confidentiality of Records (42 CFR Part 2). I understand that information about me cannot be disclosed without my written consent unless otherwise provided for in the regulations. I also understand that I may revoke this consent in writing at any time, except that action has been taken in reliance on this informed consent. I understand that, even if I do not withdraw the consent, this statement of consent will automatically expire upon disenrollment from, or successful completion of, the program.

OR

I understand that my records are protected under the provisions of AR 600-85 and NGR 600-85.

Executed on _____
(date)

Employee's Signature

EAP Coordinator's Signature