

OPR Quarterly Email January 2020, Volume 56

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(U//FOUO) **OPR's Quarterly All Employee E-Mail – January 2020 Edition**

(U//FOUO) There are times when you read the OPR All-Employee Quarterly E-Mail and think you are reading the same cases from last quarter or a quarterly E-Mail two years ago. In the words of New York Yankee great Lawrence Peter "Yogi" Berra, "It's like déjà vu all over again."

(U//FOUO) The All-Employee Quarterly E-Mail from the Office of Professional Responsibility (OPR) is designed to encourage FBI personnel to employ apply the truth of another statement credited to Yogi. "You can observe a lot by just watching." To facilitate your "watching" and learning, OPR provides you hyperlinks to offense codes and policies to facilitate your ability to learn and thereby avoid similar problematic behavior. Review the Bureau's standards of conduct and consider this E-Mail as an aid for steering clear of ethical pitfalls and other violations.

(U//FOUO) Set forth below are some examples of cases from a larger number of matters adjudicated by OPR during the last quarter. We do not include cases in which OPR found that the employee did nothing wrong. Employees are reminded that they must follow U.S. law and FBI policies when posted overseas. To contact OPR, please email us at HQ_DIV00_OPR_QUESTIONS or go to our [website](#).

Sincerely,

L. Stuart Platt

AD, OPR

(U//FOUO) **Examples of Recent Adjudications:**

1. (U//FOUO) CBD Oil: Employee tested positive for THC during an FBI drug test after using a topical CBD oil for several months. In mitigation, Employee has over 25 years of FBI service, an excellent performance record, and the continued support of the Division. Employee expressed remorse. In aggravation, Employee showed extremely poor judgment in using CBD oil bought from an alleged stranger in a parking lot. Employee was aware of the possibility that use of CBD oil could result in a positive drug test. Employees are advised cannabis and cannabis-derived products, including CBD and hemp, may contain THC. The continued use of these products may increase the risk of the presence of THC in an individual's body. If an employee is drug tested, the use of these products (including, but not limited to, ingesting, inhaling, topically applying, eating and/or drinking) may result

in a positive drug test, making the employee subject to disciplinary action, up to and including dismissal, and potential revocation the employee's security clearance.

PENALTY: 60-day suspension and Last Chance Agreement

OFFENSE: Drugs – Use or Possession, [Offense Code 4.2](#)

2. (U//FOUO) Failure to Report Foreign Travel: Employee failed to report foreign travel on two occasions in an approximately one month period. The [FBI Self-Reporting Requirements Policy Guide](#) (1037PG), Section 4.1.1 states, "All official or unofficial foreign travel must be reported via FD-771 'Report of Foreign Travel' forms within EPAS at least 45 calendar days in advance of travel." According to the Self-Reporting Policy Guide, the requirements for FBI employees who travel abroad in their personal capacity are in place because "[t]ravel outside of the United States increases the risk to FBI personnel, as well as to national security and Law Enforcement Sensitive information." Employee also failed to report a roommate and the roommate's felony arrest. In mitigation, Employee has nine years of FBI service and commendable performance reports. At the time of the misconduct, Employee was dealing with the death of a family member. In aggravation, Employee's failure to register the Employee's Bureau-issued phone prior to taking it on foreign travel resulted in excessive roaming charges. Employee's behavior raised security concerns. Employee's lack of remorse demonstrated poor rehabilitative potential.

PENALTY: 10-day suspension

OFFENSE: Failure to Report - Administrative, [Offense Code 5.7](#)

3. (U//FOUO) DUI: After attending a holiday party, Employee attempted to drive home and struck another vehicle. Local law enforcement responded to the scene and found Employee too intoxicated to comply with the officer's directions. The officers also found open bottles of alcohol in Employee's vehicle. Employee was arrested for DUI and found to have a BAC more than twice the legal limit. Prior to the accident, witnesses called 911 to report Employee as a possible drunk driver due to Employee's erratic driving. Employee pled guilty to DUI and completed the court's required Substance Abuse Traffic Offender Program. Employee also sought assistance from EAP and attended a MADD class.

PENALTY: 50-day suspension

OFFENSE: DUI/DWI – Privately Owned Vehicle, [Offense Code 4.4](#)

4. (U//FOUO) Other Misdemeanors; Failure to Report: While driving a Bureau vehicle, Employee accidentally backed into and caused damage to a private citizen's vehicle. Employee left the scene of the accident without contacting law enforcement or the vehicle's owner. Employee also failed to timely report the Bureau vehicle accident to a supervisor. Under the [Government Vehicle Use Policy Guide](#) (0947PG), Section 7.4, field office employees must "promptly notify their supervisors and [the designated Fleet Management Unit personnel] of all motor vehicle accidents in which they are involved while driving or riding in GOVs." In mitigation, Employee has more than 25 years of FBI service and a favorable performance record. Employee was undergoing personal stressors and expressed remorse for the incident. In aggravation, by failing to report the accident, Employee caused local law enforcement to expend unnecessary resources investigating the accident. Employee was advised by a coworker to report the accident on several occasions.

PENALTY: 14-day suspension

OFFENSE: Other Misdemeanors, [Offense Code 4.8](#)

Failure to Report – Administrative, [Offense Code](#)

[5.7](#)

5. (U//FOUO) DUI; Misuse of Position, Weapons Safety Violation: Employee consumed multiple drinks and then attempted to drive. Employee was pulled over for speeding and given field sobriety tests. Employee attempted to avoid arrest by falsely claiming to be on surveillance and working with other FBI employees. Employee had a handgun and rifle unsecured in the vehicle while Employee was intoxicated. The [FBI Alcohol Policy Guide](#) (0358PG), Section 1.1.1, expressly prohibits FBI agents from "[carrying] a firearm when impaired by the consumption of alcohol." In mitigation, Employee is a high performer and works well with others. Employee was experiencing several significant stressful life events. Employee expressed remorse and took steps towards treatment. In aggravation, Employee refused to submit to a breathalyzer after being transported to the police department. Employee violated several state firearms laws by not securing the weapons and having access to the weapons while intoxicated.

PENALTY: 42-day suspension

OFFENSE: DUI/DWI – Privately Owned Vehicle, [Offense Code 4.4](#)

Misuse of Position, [Offense Code 2.8](#)

Misuse of Weapon – Safety Violation, [Offense Code 5.13](#)

6. (U//FOUO) DUI: Leaving a wedding, Employee drove a privately owned vehicle while intoxicated. Employee was arrested for DUI and found to have a BAC over twice the legal limit. In mitigation, Employee has over 15 years of FBI service, expressed remorse, and has a strong potential for rehabilitation.

PENALTY: 35-day suspension

OFFENSE: DUI – Privately Owned Vehicle, [Offense Code 4.4](#)

7. (U//FOUO) Unwelcome Sexual Conduct; Unprofessional Conduct: Supervisory Employee engaged in unwelcome sexual conduct by making comments of a sexual nature to subordinates concerning their clothing, appearance, and their comparative sexual attractiveness. Employee made inappropriate comments and engaged in conduct which made coworkers uncomfortable, including spending an inordinate amount of time in their workspace, showing favoritism to female employees, and text messaging subordinates on their personal phones. In mitigation, Employee has over 10 years of FBI service and historically was given good performance reviews by prior supervisors. In aggravation, Employee is a supervisor and held to a higher standard. Employee's behavior was in direct conflict with the FBI's Core Values. The Division stated that Employee has a low potential for rehabilitation. Employee recently received a "Minimally Successful" performance review for failure to relate to others and provide professional service. Employee has one prior administrative inquiry.

PENALTY: 60-day suspension and demotion

OFFENSE: Unwanted Sexual Conduct, [Offense Code 5.20](#)
Unprofessional Conduct – On Duty, [Offense Code 5.22](#)

8. (U//FOUO) Weapons Safety Violation; Unprofessional Conduct: Employee attempted to board an airplane while armed and intoxicated. [FBI Alcohol Policy Guide](#) (0358PG), Section 1.1.1., states, "FBI employees may not . . . [c]arry a firearm when impaired by the consumption of alcohol." The [Firearms Aboard Aircraft Policy Directive](#) (0804D), Section 11.1.5, states, "[Employees] [a]re prohibited from consuming alcoholic beverages while traveling armed on an aircraft or within eight (8) hours of travel." Employee acted unprofessionally with the TSA agents and police officers who prevented Employee from boarding the plane. While intoxicated, the Employee called TSA and police officers names and used offensive language in addressing those OGA personnel. In mitigation, Employee expressed immediate remorse, took full responsibility, and obtained alcohol counseling. In aggravation, Employee harmed the FBI's reputation.

PENALTY: 30-day suspension

OFFENSE: Misuse of Weapon – Safety Violation, [Offense Code 5.13](#)
Unprofessional Conduct – Off Duty, [Offense Code 5.21](#)

9. (U//FOUO) Consensual Sexual Conduct; Misuse of Database; False Statements During Security Examinations: Employee engaged in sexual activity with a TFO in FBI office space and in an FBI vehicle "two to three times per week" over an approximate 18-month period of time. In addition, Employee misused an FBI database to query information related to her spouse's extramarital affairs. After initially claiming during a Personnel Security Polygraph (PSP) examination that the database misuse was a one-time incident, Employee later admitted it occurred over a two to three month time period. In mitigation, Employee has 16 years of FBI service, has received numerous awards, and maintains the support of the Division. In addition, Employee was experiencing significant marital and family stressors and has expressed her remorse. In aggravation, Employee failed to self-report or be honest regarding this conduct over a significant time period and it only came to light as a result of multiple failed polygraph examinations, during which Employee repeatedly omitted facts and details pertinent to the misconduct.

PENALTY: 44-day suspension

OFFENSE: Sexual Conduct - Consensual, [Offense Code 5.19](#)
Misuse of FBI Database(s)/Unauthorized Access, [Offense Code 3.5](#)
False/Misleading Information – Employment/Security
Document(s), [Offense Code 2.1](#)

10. (U//FOUO) Failure to Report Consensual Romantic Relationship: Employee engaged in a consensual romantic relationship with a direct supervisor for two years, resulting in decreased morale and a perception of favoritism throughout the Division. During the relationship, Employee continued to receive performance appraisals from her supervisor, was nominated for numerous awards, and, for the first time in 10 years prior to the supervisor's arrival, Employee received a private office assignment. Employee was aware of the FBI policies regulating consensual romantic

relationships of this nature, yet chose not to disclose it. The FBI's [Personal Relationships Policy Directive](#) (0802D), Section 6.1.2.2, states: "An employee must [r]eport the development of a romantic or intimate relationship--even though the relationship is not prohibited--with another employee in the same unit or squad or with an employee with whom a supervisory relationship exists, so that management may determine whether remedial action, such as reassignment, is necessary to prevent interference with the FBI's mission." The FBI's Policy places an equal obligation to report a romantic or intimate relationship on both supervisors and subordinates. In mitigation, Employee has 22 years of FBI service, an excellent performance record, has received numerous awards, and maintains the support of the Division.

PENALTY: One-day suspension

OFFENSE: Violation of Miscellaneous Rules/Regulations, [Offense Code 5.23](#)

11. (U//FOUO) Impermissible Carrying of Firearm While On-Duty: Supervisory Professional Staff Employee, contrary to policy and without authority, carried a personally-owned firearm while on-duty and in FBI space on multiple occasions. The FBI's [Firearms in FBI-Controlled Facilities and FBI Vehicles/Aircraft](#) (0482D), Section 5.7, states, "[o]nly current FBI SAs, FBI police officers, task force officers (TFO) and other sworn law enforcement are authorized to carry firearms in FBI vehicles or onboard FBI aircraft. Contractors and non-sworn law enforcement officers are not permitted to carry firearms in FBI vehicles or onboard FBI aircraft." Employee claimed he carried the weapon due a perceived threat he felt from a coworker. In mitigation, Employee has over 28 years of FBI service and expressed his remorse. In aggravation, Employee is a supervisor and held to a higher standard. Employee received an "Inconsistent Performer" performance review for displaying behavior that was contrary to an inclusive work environment, showing favoritism and holding team members and leaders to different standards of performance, and exhibiting a management style that contributed to a climate of unprofessionalism and unethical behavior. Employee has four prior administrative inquiries.

PENALTY: 10-day suspension

OFFENSE: Violation of Miscellaneous Rules/Regulations, [Offense Code 5.23](#)

For further information, please refer to the complete [Offense Codes and Penalty Guidelines Governing the FBI's Internal Disciplinary Process](#). Also, all FBI policies are available to employees at the Internal Policy Office's [Policy Portal](#).

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