

# SUITABILITY FACTORS

[5CFR 731.202 (b)] (Effective September, 2008)

Only the following factors may be considered as a basis for finding an individual unsuitable, and the Adjudicator must state the factors (charges) forming the basis of the decision in the charging document.

<b>SUITABILITY FACTORS</b>	<b>GENERAL APPLICATIONS/DISCUSSION</b>
<p>(1) MISCONDUCT OR NEGLIGENCE IN EMPLOYMENT</p>	<p>The appointment of an individual to a covered position when his or her employment record shows he or she has engaged in misconduct or negligence may not promote the efficiency or protect the integrity of the service.</p> <ul style="list-style-type: none"> <li>* Misconduct involves intentionally doing something wrong in the employer's estimation, while negligence is an act or omission that a person in the employee's circumstances should know is contrary to the employer's expectations.</li> <li>* May or may not have resulted in a disciplinary action, including dismissal. If dismissed, primary emphasis should be on the act or conduct which prompted the dismissal. For military misconduct, the nature of the misconduct is the governing factor, rather than the type of discharge.</li> <li>* A favorable litigation decision, including receiving unemployment benefits, would not necessarily nullify the conduct.</li> <li>* Includes: poor attendance without cause, insubordination, or other suitability issues occurring in employment (such as theft, etc).</li> <li>* Does not include performance (an inability to perform), failure to complete training, or other qualification issues.</li> <li>* Misconduct or negligence in current Federal employment is not generally included unless it is part of a pattern of conduct.</li> </ul>
<p>(2) CRIMINAL or DISHONEST CONDUCT</p>	<p><b><u>Criminal Conduct:</u></b> Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, regulations.</p> <ul style="list-style-type: none"> <li>* Primary emphasis is on the nature of the criminal conduct, which may or may not have resulted in arrests, charges, or conviction.</li> <li>* Details/reasons for dismissal of a charge must be considered; expungement of records and pardons for an offense would not nullify the conduct, unless granted on the basis of the person's innocence.</li> <li>* Pending charges of a nature that are potentially disqualifying cannot be adjudicated until case is disposed.</li> </ul> <p><b><u>Dishonest Conduct:</u></b> Dishonest conduct must be intentional, and includes deliberate lies, fraud, or deceit other than in connection with examination or appointment. Includes:</p> <ul style="list-style-type: none"> <li>* Illegal activities resulting from dishonest acts (such as theft, acceptance of a bribe, falsification of claims and business records, perjury, forgery, etc).</li> <li>* Intentional falsification of non-federal documents.</li> <li>* Deliberate financial irresponsibility with continuing, valid debts of a significant nature (such as unwillingness to satisfy debts, indebtedness caused by frivolous and irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt, history of not meeting financial obligations, etc.).</li> </ul>

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**(3) MATERIAL INTENTIONAL FALSE STATEMENT, OR DECEPTION OR FRAUD IN EXAMINATION OR APPOINTMENT.**

*OPM retains jurisdiction in all covered position cases involving evidence of material, intentional false statement, or deception or fraud in examination or appointment. Agencies must refer these cases to OPM for adjudication, or provide required notification to OPM, if the agency wants to take or has taken action under its own authority (5 CFR part 315, 5 CFR part 359, or 5 CFR part 752)*

*A charge under this factor may relate to a person's assistance of or collusion with one or more accomplices. What must be established is the person's wrongful intent, not the accomplices' wrongful intent.*

**Proving intentional false statements or engaging in deception or fraud in the competitive hiring process circumvents the Federal hiring procedures created to ensure fair and open competition.**

- \* A "Material" statement (as used in the phrase "material, intentional false statement") is one that is capable of influencing, affects, or has a natural tendency to affect an official decision. The test of materiality does not rest on whether the agency actually relied on the statement.
- \* An intentional attempt to withhold information, or furnish false information, that is capable of influencing decisions about the individual's suitability, qualifications, or other matters related to the appointment process.
- \* Material, intentional false answers to questions or application or appointment documents or material, intentional failure to admit a series of minor issues which demonstrate a pattern of misconduct, or material, intentional omission of information clearly related to the position sought (such as a performance discharge from the same type of job or a conviction for drug use when applying for a job in the medical field).
- \* Materially, intentionally falsifying experience, education, etc. that could influence an official decision (the experience or education does not have to be required for the position; it only needs to have a natural tendency to influence the decision).
- \* The impediment or interference with fair and open competition in the competitive examining process or with conditions or qualifications for appointment or restrictions on appointment in covered positions.
- \* Impersonation or collusion in examination (such as altering scores) etc.
- \* Deception and/or fraud in examination – where a person knew or should have known his or her conduct had a tendency to impede or interfere with fair and open competition in a competitive examination, or to otherwise compromise the integrity of the competitive examining system.
- \* Deception and/or fraud in appointment – where a person knew or should have known his or her conduct had a tendency to impede or interfere with conditions or qualifications for appointment or restrictions on appointment in the competitive service or in a competitive service position.

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<p><b>(4) REFUSAL TO FURNISH TESTIMONY</b> as required by 5 CFR Part 5, section 5.4.</p>	<p>Competitive service applicants and employees are required to give OPM, MSPB, or Special Counsel all information, testimony, documents, and materials requested in matters inquired of under the civil service laws, rules, and regulations, the disclosure of which is not otherwise prohibited by law. Therefore, failure to provide testimony when requested may be disqualifying. (although section 5.4 lists other requirements, the suitability factor is limited to the requirement to provide testimony when required by OPM).</p> <p><i>Authority to invoke this rule is reserved to OPM, MSPB, or the Special Counsel; therefore, agencies must not cite this disqualify factor as a basis for a suitability action. Notification to OPM is required if the agency wants to take or has taken action under its own authority (5 CFR part 315, 5 CFR part 359, or 5 CFR part 752).</i></p>
<p><b>(5) ALCOHOL ABUSE</b>, without evidence of substantial rehabilitation, of a nature and duration suggests that the applicant or appointee would be prevented from performing the duties of the position in question, or would constitute a direct threat to the property or safety of the applicant or appointee or others.</p>	<p>An individual's use of alcohol may impact on his or her ability to complete the duties of the job and/or raise questions about his or her reliability of trustworthiness, thus indicating his or her employment would not promote the efficiency or protect the integrity of the service. Includes:</p> <ul style="list-style-type: none"><li>* Current continuing abuse of alcohol.</li><li>* A pattern of alcohol-related arrest and/or problems in employment.</li><li>* Rehabilitation, if present, must be carefully considered (clear, lengthy break in patterns of abuse; strong evidence the abuse will not occur again).</li></ul>
<p><b>(6) ILLEGAL USE OF NARCOTICS DRUGS, OR OTHER CONTROLLED SUBSTANCES</b>, without evidence of substantial rehabilitation.</p>	<p>Drug involvement can raise questions about an individual's and reliability and trustworthiness or ability or willingness to comply with laws, rules, and regulations, thus indicating his or her employment would not promote the efficiency or protect the integrity of the service. Includes:</p> <ul style="list-style-type: none"><li>* Current or recent use of a serious nature.</li><li>* A pattern of drug-related arrests and/or problems in employment.</li><li>* Substantial rehabilitation cannot be established if the conduct is ongoing or recent. However, if the use is not recent, rehabilitation claims must be carefully considered (clear, lengthy break since last use; strong evidence the use will not occur again).</li></ul> <p>The distinction between this factor and the alcohol abuse factor is the use of narcotics, drugs, or other controlled substances is generally illegal; therefore, the conduct need not amount to abuse or addiction to be disqualifying. The conduct must still be sufficiently serious to cause a general concern. In cases that do not involve a criminal conviction, it is important to have clear evidence the use is illegal.</p> <p><i>Criminal conduct is an applicable factor to consider for use of drugs and would apply in instances of possession charges where personal use has not been established and the drug factor does not apply.</i></p>

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<p>(7) KNOWING AND WILFUL ENGAGEMENT IN ACTS OR ACTIVITIES DESIGNED TO OVERTHROW THE U.S. GOVERNMENT BY FORCE.</p>	<p>All Federal employees must be loyal to the United States.</p> <ul style="list-style-type: none"><li>* Disqualifying acts must be overt, defined as illegal acts.</li><li>* Disqualifying advocacy must be the incitement of indoctrination to commit defined illegal acts.</li><li>* Disqualifying associations require the individual to know of the organization's unlawful goals, and for the individual to be a active member of the organization or to have the specific intent to further its unlawful goals.</li><li>* Membership in organization, alone, is not disqualifying.</li></ul>
<p>(8) Any <u>STATUTORY</u> or <u>REGULATORY</u> <u>BAR</u> which prevents the lawful employment of the person involved in the position in question.</p>	<p>Federal statutes and/or regulations may prevent lawful employment. Includes:</p> <ul style="list-style-type: none"><li>* Participation in a strike against the government</li><li>* Conviction of misdemeanor crime (under Federal or State law) of domestic violence (use or attempted use of physical force, or the threatened use of a deadly weapon, committed by current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting or who has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim).</li><li>* Employment is determined to be in violation of the anti-nepotism statute.</li></ul> <p>Normally, agencies identify and act on these. (See the Issue Characterization Chart for additional examples).</p>
<p><b>Additional Considerations:</b> As outlined in 5 CFR 731.202(c), when making a determination the Adjudicator must consider any of the following additional considerations but only to the extent he or she deems any of them pertinent to the individual case, and must explain his or her consideration of applicable factors in the charging document and the final suitability action letter. Additional considerations not deemed pertinent by agencies or OPM in individual cases cannot be considered by the Merit Systems Protection Board as aggravating or mitigating factors during the appeal process.</p> <p>These Considerations do not apply in statutory or regulatory bars to employment.</p>	

# ADDITIONAL CONSIDERATIONS

[5CFR 731.202 (c)]

<b>ADDITIONAL CONSIDERATIONS</b>	<b>DISCUSSION</b>
(1) The <u>Nature of the POSITION</u> for which the person is applying or in which the person is employed.	The more authority, responsibility, sensitivity and public trust associated with the position, the higher the risks involved and the more potential adverse impact there is to the efficiency or integrity of the service; thus the misconduct becomes more serious as a potentially disqualifying issue. However, certain kinds of conduct may result in a negative suitability determination regardless of the position.
(3) The <u>NATURE AND SERIOUSNESS</u> of the conduct.	The more serious the conduct, the greater the potential for a negative suitability determination.
(3) The <u>CIRCUMSTANCES</u> surrounding the conduct.	Full facts and circumstances are essential to insure justice to the person and to protect the interests of the Government.
(4) The <u>RECENCY</u> of the conduct.	The more recent the conduct is, the greater the potential for a negative suitability determination.
(5) The <u>AGE</u> of the person involved at the time of the conduct.	Offenses committed as a minor are treated as less serious than those committed as an adult, unless the offense is very recent, part of a pattern, or particularly heinous.
(6) Contributing <u>SOCIETAL CONDITIONS</u> .	Economic and cultural conditions might be a mitigating factor if the conditions are now removed. Generally considered in cases with relatively minor issues.
(7) The absence or presence of <u>REHABILITATION</u> or efforts toward rehabilitation.	Clear, affirmative evidence of rehabilitation is required for a favorable adjudication.  Rehabilitation may be a consideration for all conduct, not just alcohol and drug abuse.  While formal counseling or treatment may be a consideration, other factors (such as the individual's employment record) may also be indications of rehabilitation.