

**PERFORMANCE ELEMENTS AND STANDARDS
ATTORNEY-EXAMINER (ADMINISTRATIVE JUDGES)
GS-905-13/14/15**

ELEMENT I: QUALITY OF DECISIONS (CRITICAL)

Unacceptable - Performance that often reflects one or more of the following:

1. Incorrect or incomplete identification of material legal and factual issues;
2. Failure to recognize or to consider relevant facts, evidence, or authority bearing on issues;
3. Improper or superficial analysis of issues;
4. Poor organization and readability;
5. Inappropriate citation and application of statutory and regulatory authorities, controlling Federal case law, or Board precedent;
6. Failure to follow "A Uniform System of Citation" and Board policy in citation, format, and style; or
7. Numerous or repeated errors in grammar, spelling, or punctuation.

Fully Successful - Performance that generally reflects the following:

1. Proper identification of all material legal and factual issues;
2. Appropriate recognition and consideration of relevant facts, evidence, and authority bearing on issues;
3. Proper and thorough analysis of the issues;
4. Good organization and readability;
5. Appropriate citation and application of statutory and regulatory authorities, controlling Federal case law, and Board precedent;
6. Compliance with "A Uniform System of Citation" and Board policy in citation, format, and style; and
7. Only occasional errors in grammar, spelling, and punctuation.

Exceeds Fully Successful - Performance that satisfies the Fully Successful standard and, in addition, usually reflects some of the following:

1. Skillful crafting of decisions so that they are particularly well organized, clear, and readable;
2. Highly refined subject matter knowledge of the issues without excessive verbiage;
3. High quality legal research and analysis;
4. Almost no revision required on substantive matters; or
5. Few errors in citation, format, style, grammar, spelling, and punctuation.

ELEMENT II: PRODUCTION (CRITICAL)

STANDARD*

Unacceptable - Performance that reflects the following:

Fewer than 80 decisions issued per year, unless good cause is shown.

Fully Successful - Performance that reflects the following:

85 to 100 decisions issued per year, unless good cause is shown.

Exceeds Fully Successful - Performance that reflects the following:

101 to 120 decisions issued per year.

*For CAJ's, the following numbers should be substituted: Unacceptable 60; Fully Successful – 64 to 75; Exceeds Fully Successful 76 to 90.

*For team/cluster leaders, the following numbers should be substituted: Unacceptable - 68; Fully Successful - 73 to 85; Exceeds Fully Successful - 86 to 102.

ELEMENT III: CASE MANAGEMENT (CRITICAL)

This element concerns record development, settlement, timeliness and case management excluding hearing management.

Unacceptable - Performance that often reflects one or more of the following:

1. More than 7% of all decisions issued beyond the relevant time limits without good cause shown;
2. Appeals record which reveal significant, unjustifiable time gaps;
3. Failure to conduct required prehearing/status conferences;
4. Prehearing/status conferences which fail to comply with Board policy regarding such conferences;
5. Little or no effort to use prehearing/status conferences to engage parties in settlement activities; or failure to follow Board case law and policy regarding settlement activities;
6. Failure to prepare or timely issue required prehearing/status conference orders or summaries; or failure of orders or summaries to properly set forth the issues, the burdens of proof, and the rulings made during conferences;
7. Appeals records which are incomplete;
8. Orders which are unclear, ineffective, or legally insufficient;
9. Resolutions of motions for discovery that are untimely, inappropriate, or not adequately documented in the record; or
10. Prohibited ex parte communications.

Fully Successful - Performance that generally reflects the following:

1. 95% of all decisions issued within the relevant time limits unless good cause shown (i.e., except when beyond the AJ's control or when due process or substantial cost savings require longer processing time);
2. Appeals records which contain few significant, unjustifiable time gaps in scheduling/conducting conferences, hearings, etc.;
3. Required prehearing/status conferences which routinely comply with Board policy regarding such conferences, i.e., conferences are used to narrow and clarify the

pertinent issues; to focus on obtaining stipulations of fact; to ascertain any affirmative defenses; etc.;

4. Effective use of prehearing/status conferences to engage parties in settlement activities; and adherence to Board case law and policy regarding settlement activities;

5. Timely preparation and issuance of prehearing/status conference orders or summaries, which properly set forth the issues, the burdens of proof, and rulings made during the conferences;

6. Appeals records which are complete, e.g., contain documentation of all rulings, significant actions, and submissions by the parties;

7. Orders which are clear, effective, and legally sufficient;

8. Resolutions of motions for discovery that are timely, appropriate, and adequately documented in the record; or

9. No prohibited ex parte communications.

Exceeds Fully Successful - Performance that satisfies the Fully Successful standard and, in addition, usually reflects some of the following:

1. 98% of all decisions issued within the relevant time limits and 85% all decisions issued within 110 days unless good cause is shown (e.g., CAJ duties, unusual workload, etc.).

2. Highly effective use of alternative dispute resolution techniques;

3. A concerted effort to assist parties in arriving at specific settlement terms; a high degree of skill in working the parties through difficult and sensitive settlement negotiations; a high degree of precision, creativity, or originality in crafting settlement agreements; or consistent resolution of all case-related issues in the agreement, including attorney fees where appropriate;

4. Tailoring the length and number of prehearing/status conferences to meet the needs of the case;

5. Highly effective use of prehearing/status conferences to narrow and clarify the issues and obtain stipulations of fact;

6. Thorough prehearing/status conference orders or summaries which are skillfully crafted and which are particularly complete, clear and concise;

7. Original legal thinking in orders supported by high quality legal research;
8. Effective use of systems for tracking caseload to ensure effective case processing, to ensure immediate response to case status inquiries, and to allow others to easily monitor cases in the AJ's absence; or
9. Effective handling of discovery matters for AJ's who have not been delegated the authority to handle such matters.

*An AJ's failure to meet sub-element 1 as it pertains to timeliness does not, standing alone, constitute a failure to meet the critical element as a whole.

ELEMENT IV: HEARINGS (CRITICAL)

Unacceptable - Performance that often reflects one or more of the following:

1. Lack of familiarity, at the start of the hearing, with the case and/or the law and precedents relevant to the issues;
2. Lack of focus of the hearing resulting in excessive irrelevant, immaterial, and unduly repetitious testimony;
3. Rulings which tend to be unclear, ineffective, hesitant, or not made;
4. Arbitrary or unreasonable restriction of testimony or evidence, including arbitrary imposition of time limits on testimony;
5. Prohibited ex parte communications; and
6. Development of an incomplete, unclear, or disjointed record of the hearing.

Fully Successful - Performance that generally reflects the following:

1. Sound familiarity, at the start of the hearing, with the case and the law and precedent relevant to the issues;
2. Controlled focus of the hearing to ensure that only relevant and material matters, which are not unduly repetitious, are addressed;
3. Appropriate, prompt, clear, and consistent rulings on motions and objections;
4. Reasonable time frames for the presentation of testimony and evidence;
5. No prohibited ex parte communications; and
6. Development of a complete, clear, and concise record of the hearing.

Exceeds Fully Successful - Performance that satisfies the Fully Successful standard and, in addition, usually reflects some of the following:

1. Favorable feedback from ORO, OAC, the Board members, or the courts concerning the conduct of the hearings;
2. Skillful questioning of witnesses to clarify any confusing or ambiguous testimony or to develop additional relevant facts;

3. Ability to skillfully handle foreseeable and unforeseeable occurrences arising during or in conjunction with a hearing;

4. Appropriate handling of media coverage;

5. Effective assistance to other AJ's in the improvement of hearings management;

or

6. Effective use of innovative and creative approaches to the organization of hearings, *e.g.*, case appropriate modifications to the normal order and methods of presenting evidence.

**ELEMENT V: PUBLIC CONTACTS/WORKING RELATIONSHIPS
(CRITICAL)**

Unacceptable - Performance that often reflects one or more of the following:

1. Failure to: Conduct all communications and contacts with parties, co-workers, and others in a courteous, fair, professional, and ethical manner; maintain appropriate control of proceedings, even when faced with boisterous or obstreperous conduct; display appropriate judicial demeanor and behavior which strikes a balance between the dignity of the position and the need to accomplish an efficient, effective hearing and adjudication; avoid bias or actions giving the appearance of bias; treat others without regard to race, color, religion, sex, national origin, age, disability, political affiliation, marital status, or sexual orientation;
2. Failure to promptly respond to communications from others;
3. Lack of support for Board's stated policy initiatives.

Fully Successful - Performance that generally reflects the following:

1. Conducts all communications and contacts with parties, co-workers, and others in a courteous, fair, professional, and ethical manner; maintains appropriate control of proceedings, even when faced with boisterous or obstreperous conduct; displays appropriate judicial demeanor and behavior which strikes a balance between the dignity of the position and the need to accomplish an efficient, effective hearing and adjudication; avoids bias or actions giving the appearance of bias; treats others without regard to race, color, religion, sex, national origin, age, disability, political affiliation, marital status, or sexual orientation;
2. Timely responses to telephone calls and correspondence;
3. Active support to the Board's stated policy initiatives.

Exceeds Fully Successful - Performance that satisfies the Fully Successful standard and, in addition, usually reflects one or more of the following:

1. Contribution to office or Board objectives or reputation through training of, or special efforts to provide assistance to, other employees;
2. Outreach efforts which are well prepared and well executed;
3. External publication; or
4. Notable service to the judicial or legal profession, or to the Board.

ELEMENT VI: ADMINISTRATIVE MATTERS (NONCRITICAL)

Unacceptable - Performance that often reflects one or more of the following:

1. Failure to adhere to established office policies, practices, and procedures; or
2. Failure to timely submit required office case-processing documents;
3. Communication with the regional director and other coworkers that fail to ensure that work-load problems rarely emerge because of short deadlines, administrative oversights, or absence from the office;
4. Failure to provide timely notice to regional director concerning sensitive situations.

Fully Successful - Performance that generally reflects the following:

1. Adherence to established office policies, practices, and procedures; and
2. Timely submission of required office documents, e.g., travel authorization requests, travel vouchers, time and attendance documents, casetracking information, and court reporter documents;
3. Communication with the regional director and other coworkers to ensure that work-load problems rarely emerge because of short deadlines, administrative oversights, or absence from the office;
4. Timely notice to regional director concerning sensitive situations.

Exceeds Fully Successful - Performance that satisfies the Fully Successful standard and, in addition, reflects one of the following:

1. Appropriate recommendations, and assistance, to improve the office or the Board;
2. Voluntary or willing assumption of additional duties relating to office policies, practices and procedures, e.g., materially assists in maintaining the office library; materially assists in reviewing proposed regulations, forms, or policies; or materially assists in the application of technological improvements; or
3. Effective service, when requested, as a team leader or acting regional director.