**UNITED STATES MARINE CORPS**
MARINE CORPS BASE
PSC BOX 20004
CAMP LEJEUNE, NORTH CAROLINA 28542-0004

BO 12531.7D
BCPD
01 DEC 1993

BASE ORDER 12531.7D

From: Commanding General
To: Distribution List

Subj: WITHHOLDING OF WITHIN-GRADE SALARY INCREASES FOR CIVIL SERVICE EMPLOYEES

Ref: (a) FPM 531 (NOTAL)
(b) CPI 431 (NOTAL)
(c) BO 12430.4

Encl: (1) Sample Notice of Negative Determination Denying a Within-Grade Increase (WGI)
(2) Sample Notice of Decision on Request for Reconsideration of Withholding a WGI

1. Purpose. To provide policy, guidance, and procedural instructions per references (a) and (b), concerning withholding of within-grade salary increases for General Schedule (GS) and Federal Wage System (FWS) civil service employees.

2. Cancellation. BO 12531.7C.

3. Coverage. This Order applies to all DON GS employees serving under career or career-conditional appointment and all FWS employees. This Order also applies to those senior level employees known as General Managers (GM) and previously covered by the Merit Pay System.

4. Background

a. Salary increases are directly linked to the DON Performance Appraisal Review System by references (a) and (b).

b. Section 5335 of Title 5 of the U.S. Code authorizes periodic salary increases for employees whose work is of an acceptable level, i.e., appraised as satisfactory or better. Included is the requirement to deny salary increases to employees whose performance is determined to be of a Minimally Successful level as defined in reference (c). Employees whose performance is appraised above the Unacceptable level are subject to two levels of pay:

(1) The first level will be for employees whose work meets the minimum performance standards only. Employees at this level, while not requiring removal, do not merit receiving a WGI.

(2) The second level will encompass the vast majority of employees whose performance is determined to be of a Fully Successful level or better. Employees at this level will receive a WGI in recognition of such performance at the time they meet other procedural requirements specified in reference (a).

c. In addition to the salary increases cited above, high quality performance may be recognized in the form of a quality increase (bonus WGI) or a cash award for GS and GM employees, or by a cash award for FWS employees. Reference (c) provides instructions regarding cash awards and quality increases.

d. The granting and withholding of a WGI is linked to the performance appraisal program, in that a salary increase is only granted to those employees who are performing at the Fully Successful level or better.

5. Policy

a. Full use shall be made of the authority cited above in such a manner as to secure and maintain the high quality of personnel necessary for an effective and efficient government service, to motivate employees to perform continuously at their full capacity, and to ensure that every employee is paid at a level consistent with the degree of competence with which assignments are performed.

b. WGI's will be withheld for employees whose work is not at a Fully Successful or better level until such time as it is determined that their work has reached at least the Fully Successful level.

6. Definitions and Explanatory Information. To ensure a better understanding of the terms used in connection with granting/withholding WGI's, the following definitions are provided:

a. Acceptable Level of Performance. Performance of GS, GM, and FWS employees at the Fully Successful level or better on all critical elements established for the employee's job/position.

b. Appraisal. The comparison of an employee's performance of duties and responsibilities with established performance standards.

c. Creditable Service. Any service which is creditable in the computation of a single waiting period. (See paragraph 6m.)

d. Critical Element. Any requirement of the job/position which is sufficiently important that inadequate performance of it outweighs satisfactory or better performance in other aspects of the job.

e. Days. Calendar days.

f. Fact-Finder. An individual appointed by the reconsideration official (see paragraph 6k) to conduct an inquiry about the issue of the withholding of a WGI.

g. Minimally Successful Performance. Performance that fails to meet the Fully Successful level on one or more critical elements established for the job/position. Performance at this level requires withholding of a WGI.

h. Negative Determination. A written decision not to grant a WGI.

i. Rate of Basic Pay. The rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind.

j. Rating. The official performance appraisal of an employee's overall job performance conducted under the DON Performance Appraisal Review System.

k. Reconsideration Official. The individual designated to reconsider a negative determination of an employee's WGI and make a final decision on the withholding. (See paragraph 7 and paragraph 8c for the authority and responsibilities of the reconsideration official.)

l. Supervisor. An individual employed by the activity having the authority to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, evaluate performance, adjust their grievances, or effectively recommend such action.

m. Waiting Period. The minimum time requirement of creditable service to be eligible for consideration for a WGI.

n. Within Grade Increase. A periodic increase in an employee's rate of basic pay from one step of the grade of the job/position to which assigned, to the next higher step of that grade.

7. Delegation of Authority

a. Approving/Withholding Official. The first-line supervisor, i.e., the immediate supervisor, is hereby delegated authority to approve/withhold WGI's.

b. Reconsideration Official. Authority to reconsider the withholding of a WGI is hereby delegated to the supervisory level deemed appropriate for their organization by organizational commanders, heads of command staff sections, and department heads. The level exercising such authority must be at least one level higher than the person who made the decision to withhold. Also, the level designated to exercise this authority must be consistently used within the organization. Exception: if the senior command official withholds a WGI, that individual will serve as the reconsideration official.

8. Responsibilities

a. Civilian Personnel Director. The Civilian Personnel Director is responsible for:

(1) Ensuring that adequate advice and assistance is provided to individuals involved in the approval/denial of WGI's and reconsideration thereof.

(2) Ensuring that an employee does not receive a WGI unless the waiting period is completed, the level of performance has been determined to be Fully Successful or better, and the employee's most recent performance rating is Fully Successful or above.

(3) Ensuring that a WGI determination is postponed under the conditions described in paragraph 12a.

(4) Maintaining a reconsideration file as required by paragraph 10c for each employee whose WGI has been denied.

(5) Ensuring that all supervisors are made aware of the proper procedures applicable to the approval/withholding of WGI's.

b. Approving/Withholding Official (Immediate Supervisor). This official is responsible for:

(1) Establishing and communicating to employees the performance requirements (critical elements and performance standards) necessary for satisfactory performance and for granting or withholding WGI's.

(2) Assisting employees in improving their performance when such performance falls below the Fully Successful level.

(3) Issuing a timely rating of record which supports denying a WGI and initiating action to deny the WGI for an employee who is otherwise eligible but who has failed to perform at the Fully Successful level.

(4) Completing a rating of record which supports granting the WGI and initiating action to grant the WGI should an employee whose rating of record is below Fully Successful improve and sustain the employee's performance at a Fully Successful or higher level.

c. Reconsideration Official. The reconsideration official is responsible for:

(1) Establishing an official file which contains all pertinent documents relating to a decision not to grant a WGI. The file will contain the information identified in paragraph 10c.

(2) Reviewing an employee's request for reconsideration. Such review may consist of the following:

(a) Reviewing all documentation in the reconsideration file.

(b) Personally conducting an inquiry and reducing the results of such inquiry to writing.

(c) Appointing a fact-finder, if determined necessary, to conduct an inquiry and report the findings of fact in writing. The fact-finder may be required to make recommendations.

(d) Accepting an oral presentation by the employee or employee's representative, preparing a written summary of such a presentation, and allowing the employee or the employee's representative to submit written exceptions to the summary for the reconsideration file if desired.

(e) A combination of the above.

(3) Determining whether to allow the employee's choice of representative.

(4) Determining whether to reject untimely filed requests or to extend the time limit for the employee, if the employee was not notified of the time limit and was not otherwise aware of it, or if the employee was prevented by uncontrollable circumstances from requesting reconsideration within the time limit.

(5) Providing the employee with a written final decision to a reconsideration request no later than 30 days following the receipt of the reconsideration request.

(6) Forwarding the reconsideration file to the Civilian Personnel Division after making a final written decision.

d. Employee. The employee is responsible for the timely filing of any written request for reconsideration within 15 days after receipt of a negative determination. This written request will clearly set forth all of the reasons that the reconsideration official should consider.

9. Procedures for Approving/Withholding a WGI

a. A rating of record of Fully Successful or above is required to support a WGI for GS, GM, and FWS employees. This requirement will be explained to each employee at the beginning of the performance appraisal cycle (1 January) or upon occupancy of the job/position.

b. Supervisors will be notified in advance by the Civilian Personnel Division of the WGI due date for their employees. The WGI notice will contain instructions to follow to approve or withhold the WGI as appropriate. Failure to receive the notice, however, does not relieve the supervisor of the responsibilities set forth in paragraph 8b.

c. Supervisors are responsible for ensuring that their employee's performance is at least Fully Successful before the employees are granted a WGI for which they are otherwise eligible.

(1) A WGI will be denied for any covered employee whose rating of record does not reflect a Fully Successful or better level of performance.

(2) An employee whose most recent performance rating of record does not support the granting of a WGI may only receive the increase when a new rating of record is completed showing that the employee has demonstrated a sustained Fully Successful level of performance.

(2) An employee whose most recent performance rating of record does not support the granting of a WGI may only receive the increase when a new rating of record is completed showing that the employee has demonstrated a sustained Fully Successful level of performance.

(3) If an employee's latest rating of record supports the granting of a WGI, but the employee is no longer performing at a Fully Successful level, a new rating of record must be completed prior to completion of the waiting period and the WGI denied.

d. When a negative determination is made and a WGI denied, the employee shall be given a written notice following the completion of the waiting period or other period upon which the negative determination was based. The notice of negative determination should be given to the employee within 30 days after completion of the period upon which the negative determination is based. The negative determination notice shall contain the following:

(1) The reasons for the negative determination and the specific critical elements that the employee is not performing acceptably and the performance standards necessary to support granting the WGI.

(2) The employee's right to request reconsideration in writing not more than 15 days after receiving the notice and the identity of the reconsideration official.

See enclosure (1) for a sample letter of negative determination.

10. Procedures for Reconsideration of a Negative Determination

a. An employee, upon receipt of a negative determination, shall have the right to:

(1) Submit a written request for reconsideration stating the reasons for contesting the determination.

(2) A reasonable amount of official time, if in a duty status, to review the material relied upon to make the determination and to prepare a response.

(3) Be represented in requesting reconsideration of the negative determination. The reconsideration official may disallow the choice of an individual as a representative which would result in a conflict of interest or position, would result in a conflict with the priority needs of the activity, or would give rise to unreasonable cost to the government. The terms of any applicable bargaining agreement govern representation for employees in an exclusive bargaining unit.

b. The 15-day time limit to request reconsideration may be extended if the employee was not notified of the time limit and was not otherwise aware of it, or if the employee was prevented by circumstances beyond the employee's control from requesting reconsideration within the time limit.

c. The Civilian Personnel Division will maintain a reconsideration file until the employee reaches a Fully Successful or better level of performance and is granted a WGI or until an appeal or grievance resulting from the negative determination is finally adjudicated, whichever is longer. This file shall not contain any document that has not been made available to the employee or the employee's representative and shall contain, at a minimum, the following:

(1) Employee's rating of record supporting the denial of the WGI.

(2) Written negative determination and supporting documentation.

(3) Employee's written request for reconsideration.

(4) Report of investigation, if made.

(5) Written summary or transcript of any personal presentation made and, if submitted, a written exception to the summary by the employee or employee's representative.

(6) The decision on the request for reconsideration.

d. The employee shall be informed in writing of the decision to either reverse or sustain the negative determination and the right to further review, if applicable, as outlined in paragraph 11. (See enclosure (2) for sample letter sustaining/reversing the negative determination.) If the reconsideration official grants the WGI, it shall be retroactive to its original due date.

11. Grievances/Appeals. When a negative determination has been sustained by the reconsideration official, the employee has a further right of review.

a. Unit Employees. Unit employees have the right to grieve the negative determination in accordance with the terms of the negotiated grievance procedures.

b. Non-Unit Employees

(1) FWS. A FWS employee has the right to grieve the negative determination through the Administrative Grievance Procedure.

(2) GS and GM . GS and GM employees have the right to appeal the negative determination to the Merit Systems Protection Board.

12. Timing of Actions

a. Delay in Determination

(1) An employee's WGI determination shall be postponed at least 90 days when the employee does not have a rating of record for reasons such as:

(a) An employee has not been informed of the specific requirements for performance at the Fully Successful level in the employee's current position at least 90 days prior to the end of the waiting period, and has not been given a rating of record in any position within 90 days before the end of the waiting period.

(b) An employee is reduced in grade because of unacceptable performance to a position in which the employee is eligible for a WGI or will become eligible within 90 days.

(2) When a WGI determination has been so postponed:

(a) The employee will be informed in writing of the reason for the postponement, the length of time the rating period will be extended, and the performance requirements necessary to be granted a WGI.

(b) The WGI will be granted retroactively to the beginning of the pay period following the completion of the applicable waiting period, if, following the delay, the employee's performance rating of record supports granting a WGI.

b. Actions After Withholding

(1) When a Fully Successful performance level has been demonstrated by an employee, a new rating of record will be completed promptly and the employee will be granted the WGI at the beginning of the first day of the next pay period after completion of the new rating.

(2) After the initial withholding of the WGI, the supervisor, at a minimum, shall determine whether an employee's performance warrants the WGI no more than 52 calendar weeks following the original eligibility date. If the

supervisor continues to deny the WGI, determinations will be made not later than each 52 calendar weeks thereafter.

(3) Completion of a rating of record showing a Fully Successful rating for an employee requires the supervisor to grant a WGI it is currently withholding.

c. When, due to administrative error, oversight, or delay, a positive determination is made after the waiting period is complete, the effective date of the WGI shall be retroactive to the original due date.

d. When, for reasons such as listed in paragraph 12c above, a WGI has been granted where the employee's rating of record prior to the effective date did not reflect a Fully Successful level of performance, the supervisor must so notify the employee and reduce the employee's rate of pay. Such a reduction is not an appealable adverse action. The employee will be issued a notice of negative determination as described in paragraph 9.

13. Action. All organizations employing civil service personnel shall comply with the instructions contained herein. Organizational commanders, heads of command staff sections, and department heads will ensure that all subordinate managers and supervisors (military and civilian) are thoroughly familiar with the contents of this Order and that this Order is made available to the employees upon request.

14. Summary of Revision. This Order has been republished in its entirety, and owing to the high level of interest in its subject, should be reviewed in its totality.

15. Concurrence. This Order has been coordinated with and concurred in by the Commanding Officer, Marine Corps Air Station, New River.

L. H. LIVINGSTON

DISTRIBUTION: C

SAMPLE NOTICE OF NEGATIVE DETERMINATION DENYING A WGI

(date)

From: Immediate Supervisor
To: Ms. Jane Doe, Clerk-Typist, GS-322-3, PD #1485

Subj: NOTIFICATION OF WITHHOLDING OF WITHIN-GRADE INCREASE (WGI)

Ref: (a) BO 12531.7D

1. Per the reference, you were advised orally on 15 November 1992:

a. That you will be eligible for a WGI on 10 January 1993.

b. That your work performance was not of a Fully Successful level in relation to the critical elements and performance standards established for your position. It was explained to you how your work performance could be improved, and that your WGI would not be approved until your work is of a Fully Successful level.

2. The critical elements in which your performance has fallen below the Fully Successful level, their corresponding Fully Successful performance standards, and the manner in which you have performed in those elements are as follows:

a. Critical element: Types and prepares correspondence and other documents for the administration branch.

b. Fully Successful standard: Typing assignments are completed by the established due date, are prepared in correct format, and contain no more than one error per page.

c. Manner of performance: As you have been informed, you have been making excessive typographical errors, strikeovers, and smudges. Additionally, you have not been adhering to the required formats as specified in your performance standards.

3. You were advised that you could improve your work performance by reviewing the work folder before typing to see what information was needed and proofreading the finished product to ensure correctness of spelling, information needed, and format. You were assured that your supervisor is available for advisory information at all times and that you would be given reasonable opportunity and assistance to make the needed improvement.

4. Based on the deficiencies cited in paragraph 2 and a review of your performance since 15 May 1992, it has been determined that your performance has not yet reached a Fully Successful level; therefore, it has been decided to deny your WGI until such time as your work is of a Fully Successful level.

5. You have a right to request in writing reconsideration of the decision to withhold your WGI. Your request should be addressed to (see paragraph 7b of the basic Order regarding identification of the reconsideration official) and submitted within 15 days after receipt of this decision. You must include all the reasons why you believe this decision should be reconsidered and request (if desired) the opportunity to present them orally, to the reconsideration official. If you desire to present them orally, you may be accompanied by a representative, and you and your representative will be granted a reasonable amount of official time for this purpose. You are assured that you and/or your representative will be free from restraint, interference, coercion, discrimination, or reprisal in connection with the presentation of your request for reconsideration.

ENCLOSURE (1)

6. You are encouraged to make every effort to improve your performance. You are assured that you will continue to be given reasonable assistance and opportunity to improve your performance. You will again be considered for a WGI as soon as you have demonstrated sustained performance at the Fully Successful level, but in no event later than 52 calendar weeks from the end of the waiting period to which this negative determination applies.

(Signed by Supervisor)
(SUBMIT DRAFT TO CIVILIAN PERSONNEL DIVISION PRIOR TO ISSUANCE)

SAMPLE NOTICE OF DECISION ON REQUEST FOR
RECONSIDERATION OF WITHHOLDING A WGI

(date)

From: Head, Maintenance and Repair Branch
To: Ms. Jane Doe, Clerk-Typist, GS-322-3, PD #1485

Subj: DECISION ON REQUEST FOR RECONSIDERATION OF WITHHOLDING OF WITHIN-GRADE INCREASE (WGI)

Ref: (a) Unit Supervisor ltr of 29 Jan 93
(b) Your ltr of 5 Feb 93

1. By reference (a), you were advised of the decision to deny your WGI until such time as your work is of a Fully Successful level. Reference (a) set forth the reasons for that decision.

2. You were advised of your right to contest, personally and in writing, the basis for the decision, and to have a representative of your choice in presenting your request. By reference (b), you requested reconsideration of the decision and presented reasons therefor. You were granted a reasonable amount of official time to present your reasons.

3. The decision set forth in reference (a) and supporting information including your written and oral presentation, have been carefully considered. The withholding of your WGI has been found to be supported by substantial evidence. (Discuss the most significant aspects of performance on which the denial is based.)

4. It has been decided to sustain the decision to withhold your WGI. A new determination of acceptable level of performance will be made not later than (fill in date that is 52 weeks following the original due date). This action is considered necessary for the efficiency of the service and to impress you with the importance of performing at a Fully Successful level. The WGI will be granted upon attainment of a Fully Successful level of performance.

(Alternate paragraph 3)

3. The decision set forth in reference (a) and supporting information including your written and oral presentation have been carefully considered. The withholding of your WGI has not been found to be supported by substantial evidence. Accordingly, it has been decided to approve your WGI effective (fill in original due date).

(If alternate paragraph 3 is used, paragraph 4 and 5 would be omitted.

5. You may appeal or grieve this decision by writing to: (Refer to paragraph 11 of the basic Order to determine whether the employee may grieve or appeal.) If you exercise this right, your grievance/appeal may be initiated immediately but not later than 15 calendar days after receipt of this decision.

(Signature of Branch Head)

Copy to:
CPD (attach complete Reconsideration File)

(SUBMIT DRAFT OF NOTICE TO CIVILIAN PERSONNEL DIVISION PRIOR TO ISSUANCE)

ENCLOSURE (2)