

Work Credit Abuse

Work credit abuse (a.k.a. mortgaging) is an act of misconduct, which occurs when an employee knowingly posts for credit for work which is substantively incomplete, either through the absence of rejections, or the presence of rejections that are inappropriate, for production gain, docket management gain or both (e.g. to receive an award, to avoid a performance warning, etc.). The standard for determining misconduct is a preponderance of the evidence; i.e., whether it is more likely true than not, the employee committed work credit abuse.

The determination as to whether or not mortgaging has occurred is fact-based and is initially made at the TC level by the SPE, in consultation with the Group Director and optionally the TC ER Liaison. SPEs should therefore be careful not to confuse work credit abuse with poor quality work under the PAP, considering the Quality Major Activities for which the examiner is responsible. Managers should address concerns about possible work credit abuse through oral discussion and mentoring, when those concerns arise, in order to lessen the likelihood of repeat or escalating occurrences. Before proceeding down the conduct path and potential disciplinary action, SPEs should consider the known facts and the context in which the examiner's action occurred. For example:

1. What is the nature of the work product; i.e., was there a *bona fide* attempt to complete the work?
2. Was there a 'gain' involved for the employee, and if so, what is the nature of the 'gain'?
3. Were the actions called into question auto-counted?
4. What level (if any) of signatory authority does the employee have?
5. How many applications are involved?
6. Were there known problems with automated systems that could be relevant to the situation?
7. When discovered, did the examiner bring the problem to the attention of the SPE?

Examples of work credit abuse may include, but are not limited to:

1. Posting for credit blank office actions;
2. Posting for credit office actions with only trivial issues generically expressed or addressed, with no substantive objections or rejections;
3. Posting for credit office actions that contain only rejections that can be written with a cursory review of the claims (e.g. simple §112, 2nd paragraphs) where the search history reflects that only a limited superficial search was conducted;
4. Posting for credit an office action including only a superficial "shotgun"-style rejection (e.g. "claims 1-50 are rejected") where the rejection reflects that there was no *bona fide* attempt to complete the office action prior to posting for credit;
5. Posting for credit office actions that contain only text copied from a previous Office action such as wherein:
 - o the pending claims don't correspond to those in the cut and pasted Office action;
 - o the claims were substantively amended and the art applied is no longer properly applicable (as in the case when a previous action was copied); or
 - o the action is being made final with no address of applicant's response to the previous Office action.
6. Posting for credit complete Office actions that are from a different application which are not applicable to the application at hand.
7. Posting for credit an action with an omission resulting in a return by TSS (e.g., missing 1449), where the Office action is subsequently significantly rewritten prior to mailing.
8. Office actions that contain only the claims to be mapped.

When the determination of misconduct has been made, these and additional inquiries again form part of the Douglas factor analysis that will determine the degree of penalty proposed. For work credit abuse situations, the range of penalty proposed for a first occurrence will generally fall within counseling to a 14-day suspension; however, the specifics of the case may warrant a penalty outside of that range. If the employee's behavior is egregious, oral discussion or mentoring only may not be effective or appropriate. The specifics of each case should be considered carefully. Employee Relations assists managers in conducting the Douglas Factor analysis, and in recommending penalties consistent with progressive discipline. SPEs should fully explain the facts, in their patent examining context, to the Employee Relations Specialist.

The Douglas Factors include:

- (1) The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
- (2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- (3) the employee's past disciplinary record;
- (4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- (5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;
- (6) consistency of the penalty with those imposed upon other employees for the same or similar offenses;
- (7) consistency of the penalty with any applicable agency table of penalties;
- (8) the notoriety of the offense or its impact upon the reputation of the agency;
- (9) the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
- (10) potential for the employee's rehabilitation;
- (11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
- (12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.