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- C. Whenever the supervisor determines that the employee's work is not "acceptable," the supervisor shall follow the provisions of Article 43.
 - D. No employee shall receive a negative determination without first being provided with an opportunity to improve as provided for in Article 43.
 - E. If an employee is failing a standard and a Performance Improvement Plan is not initiated at least 90 days prior to the end of the waiting period, the Performance Improvement Plan will extend for the necessary time to provide the full 90 days. At the end of the 90 days, if the summary performance rating is at least "Effective," the within-grade increase will be granted retroactive to the original due date.
 - F. After a final determination results in the denial of an employee's within grade increase, a Supervisor may subsequently determine that the employee has improved his/her performance and has demonstrated a sustained level of performance meeting the requirements of an acceptable level of competence. When this occurs, the Supervisor may prepare a new rating of record reflecting the employee's progress to the Effective level and grant the within grade increase in accordance with 5 C.F.R. 531.411.

Section 4 – Negative Determination

- A. When a determination is made that an employee's work is not of an acceptable level of competence (negative determination), the employee will be notified in writing as soon as possible after completion of the waiting period:
 - 1. the basis for this negative determination;
 - 2. the employee's right to file a written request for reconsideration within 15 calendar days from receipt of the official determination;
 - 3. the name and address of the Management Official who will reconsider the official determination and with whom the request for reconsideration should be filed (who shall have taken no part, formally or informally in the original determination);
 - 4. the right of the employee to have representation according to terms of the DOL-NCFLA Agreement;

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5. the right of the employee to contest, in writing, the basis for the negative determination; and
 6. the right of the employee and his/her representative to have a reasonable amount of time to submit the request

B. Reconsideration.

1. When a request for reconsideration is received, the human resources office shall establish an employee reconsideration file which shall contain all pertinent documents relating to the negative determination, including copies of the written determination and the basis therefore, the employee's written request for reconsideration, the report of investigation if an investigation was made, the decision of the reconsideration official, and any other documents the employee may have submitted regarding the determination.
2. The reconsideration file shall not contain any document that has not been made available to the employee and/or his/her representative with an opportunity to submit a written exception, including any exception the employee may have had to the written summary of his/her personal presentation.
3. The time limit for submitting a request for reconsideration shall be extended when: (1) the employee was not notified of the time limit in accordance with Section 4A(2) and was not otherwise aware of it, or (2) the employee was prevented by circumstances beyond his/her control from requesting reconsideration within the time limit.
4. The Management Official shall reconsider the official determination of the supervisor, taking into consideration any written response from the employee and/or his/her representative.
5. The Management Official, after reconsideration, will issue a decision in writing on the negative determination, preferably within 15 calendar days, but no later than 45 days, after receipt of the request for reconsideration. If the decision does not sustain the initial negative determination and the WIGI is to be granted, it will be granted retroactive to the original due date. If the decision sustains the initial negative determination, the decision letter shall notify the employee of his/her right to grieve the decision.

