U.S. Customs and Border Protection Discipline Analysis Report
Fiscal Year 2018

Executive Summary

The release of the U.S. Customs and Border Protection (CBP) Discipline Analysis Report for Fiscal Year (FY) 2018 supports CBP's goal to promote greater efficiency, transparency, and consistency in its discipline program. CBP is one of the world's largest law enforcement organizations with more than 60,000 employees. Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To maintain the public's trust and confidence in the integrity of CBP, each employee must respect and adhere to the principles of ethical conduct as well as CBP's Standards of Conduct.

The FY 2018 Discipline Analysis Report is designed to apprise CBP leadership about the latest trends in discipline and employee misconduct CBP-wide. The report contains statistical data and analysis of CBP's discipline program to include a comparison of employee discipline across all program offices. It also includes an overview of disciplinary actions taken by CBP deciding officials and identifies trends in employee misconduct by individual program office.

During FY 2018 approximately nine percent of the total CBP workforce engaged in some degree of misconduct resulting in formal disciplinary action. Written reprimands, the least severe type of formal disciplinary action, remain the most common type of corrective action. A smaller percentage of the workforce engaged in misconduct for which more severe discipline was necessary. In keeping with the Agency's Table of Penalties and Offenses which provides guidance on appropriate penalties for misconduct offense categories, actions beyond written reprimands include short suspensions without pay up to and including removal from Federal service.

Discipline in CBP is handled either by a central proposing body, the Discipline Review Board (DRB), or by a local management official. When a proposal is made by local management, we will refer to this as a management determination. When the proposal is made by the DRB, it will be referred to as a DRB issued proposal. Overall, 46 % of proposal letters were sustained in FY18, 47% were mitigated, and 7% did not result in discipline.

The three most common types of misconduct resulting in a management determination in FY 2018 were the same as FY 2017; Failure to Follow Policy/Procedures, Failure to Safeguard Property, and Unprofessional Conduct. These three types of misconduct accounted for 38 percent of all the determinations.

The most common types of misconduct the DRB issued proposals for in FY 2018, were Dishonesty, Driving Under the Influence, and Misuse of Position. A total of 271 allegations of misconduct involving 248 employees were presented to DRB panels which means that less than one-half of one percent of CBP's employees were the subject of cases presented to the DRB.

The United States Border Patrol and Office of Field Operations comprise the majority of CBP employees and 92 percent of all actions processed in FY 2018 involve employees from these two organizations. Laredo and San Diego Field Offices as well as Tucson and El Paso (Rio Grande) Sectors are the largest offices in the country and effected the most disciplinary actions.

The FY 2018 CBP Discipline Analysis Report includes a comprehensive statistical analysis of all disciplinary actions taken against CBP employees in FY 2018, including comparisons to prior FY data, with specific sections addressing:

- Agency-wide Actions;
- DRB Cases;
- Employee Arrests;
- Alcohol Related Driving Offenses;
- Domestic Violence;
- Mandatory Removals of Law Enforcement Officers (LEO);
- Indefinite Suspensions;
- Supervisory Discipline;
- Use of Force Allegations;
- Probationary Period Terminations; and
- Drug-Free Workplace.

In addition to these sections, each component has its own appendix which provides a deeper analysis into component-specific disciplinary actions.

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Introduction

In fulfilling CBP's mission and to maintain public trust, its employees must uphold the highest standards of integrity, professionalism, and loyalty to the United States. Employees who violate CBP's Standards of Conduct must be held accountable for their actions. To maintain our workforce's trust, CBP's discipline program must efficiently evaluate employee misconduct and impose consistently fair and timely corrective action. These standards are essential to the Agency's success and the public's trust in CBP.

CBP employees are bound by the Merit System Principles which serve as a foundation for the standards of ethical conduct for all federal employees. The public has a right to an efficient and effective workforce which is responsive to their needs. CBP recognizes that public service is a public trust and employees are obligated to honor that trust by respect for and adherence to the Constitution, laws, and ethical principles of Government service.

The CBP Unified Integrity and Personal Accountability Strategy emphasizes that employee misconduct destroys public trust and underscores the need for personal responsibility by every employee. The strategy outlines several goals and objectives for CBP which are designed to strengthen its culture of integrity. For the Office of Human Resources Management (HRM), these goals and objectives include efforts to improve transparency and increase efficiency and consistency throughout the discipline process. To meet these objectives, the FY 2018 CBP Discipline Analysis Report includes statistical analyses and sections highlighting employee arrests and disciplinary action in response to those arrests, indefinite suspensions, supervisory discipline, probationary terminations, and actions initiated in accordance with CBP's Drug Free Workplace Program. Other highlights include an analysis of the number and types of cases presented to the DRB, with a targeted breakdown by program office, length of service, and supervisory status.

Once again, this year's report contains data analysis for disciplinary actions CBP-wide. Each component has its own appendix, which provides a deeper analysis into component-specific serious disciplinary actions.

Information from the Human Resources Business Engine, Joint Integrity Case Management System, Firearms and Credentials Tracking System, in addition to data obtained from the records maintained by the National Finance Center served as source data in conducting the analysis for this report.

Overview of CBP's Discipline Process

CBP's ability to achieve its mission directly depends upon its workforce. Discipline, whether an informal or formal action, is imposed by CBP to correct employee misconduct that affects the efficiency of the service, and encourage employee conduct that is in compliance with the Agency's standards of conduct, standard operating procedures, policies, and office practices.

Human Resources Policy and Programs Directorate (HRPPD) is the sole authority within CBP for the management of labor and employee relations matters. HRPPD develops, establishes, and implements CBP-wide Labor and Employee Relations (LER) policies, programs, and procedures to facilitate effectiveness and operational consistency. HRPPD provides expert advice and training, and processes matters related to disciplinary and adverse actions, medical issues, leave administration, performance-based actions, grievances, unfair labor practices (ULP), and more.

HRPPD has 94 employees who provide LER support to CBP's components, ranging from the Headquarters level to the field level, and CBP locations abroad. There are approximately 60,000 CBP employees Agency-wide. In FY 2018, LER closed 7,739 allegation of misconduct cases; the average case load of the LER staff is approximately 103[1] cases each. The dedicated and highly qualified LER staff continues to be extremely successful in supporting the Agency in accomplishing its mission.
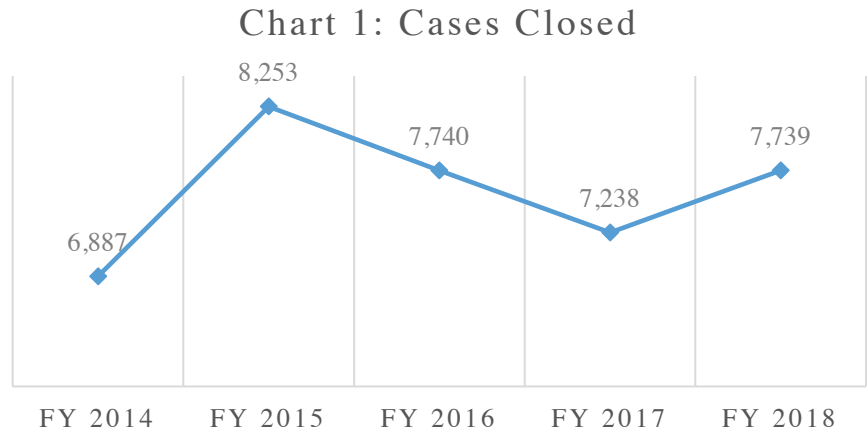
In accordance with procedures set forth in 5 C.F.R. Part 752 and 5 U.S.C. Chapter 75, collective bargaining agreements (CBAs) and Agency policies, CBP addresses misconduct through informal discipline, as well as formal discipline, which includes written reprimands, disciplinary suspensions between 1 and 14 calendar days, and adverse actions including suspensions of 15 calendar days or more, demotions, and removals. Informal discipline customarily refers to a written or verbal counseling or memorandum of instruction.

In accordance with CBP's Delegation of Authority, the authority to propose or decide specified actions is generally delegated to supervisory and managerial positions at the lowest organizational level, appropriate to the severity of the misconduct, subject to certain exceptions such as DRB and Domestic Violence Cases. The final disposition of proposed discipline is determined by a deciding official in the employee's chain of command, unless there is a conflict of interest. In accordance with 5 U.S.C. § 7513(a), HRM and management ensure that the employee's rights are preserved throughout the discipline process and all decisions rendered are fair, consistent, and for "such cause as will promote the efficiency of the service."

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[1] These numbers do not include the performance based actions, medical issues, grievances, ULPs, training provided to the stakeholders, etc.

Agency-Wide Actions

In FY 2018, HRM closed 7,739 allegations of misconduct (cases) CBP-wide. Discipline cases that were received in a previous fiscal year may have been closed in the current fiscal year. The traversing of fiscal years is attributable to several factors, which include due process requirements, requests for extensions, and other case related issues. Chart 1 shows that the number of cases HRM closed has fluctuated over the past five years. HRM closed on average 7,571 cases per year in the last five fiscal years.

Chart 1: Cases Closed

- FY 2014: 6,887
- FY 2015: 8,253
- FY 2016: 7,740
- FY 2017: 7,238
- FY 2018: 7,739

The 7,739 cases that HRM closed involved 5,447 identified employees, 1,115 unknown employees (unknown employees were not identified when the allegation was made and were unable to be identified by CBP), and 32 contractors. This means that nine percent of CBP employees were the subject of an allegation of misconduct that closed in FY 2018.

Chart 2: Cases by Component

Component	Cases
OFO	3,761
USBP	3,377
ES	312
AMO	122
OS	88
OPR	27
OC	24
OT	20
OPA	4
OCA	2
OCC	2
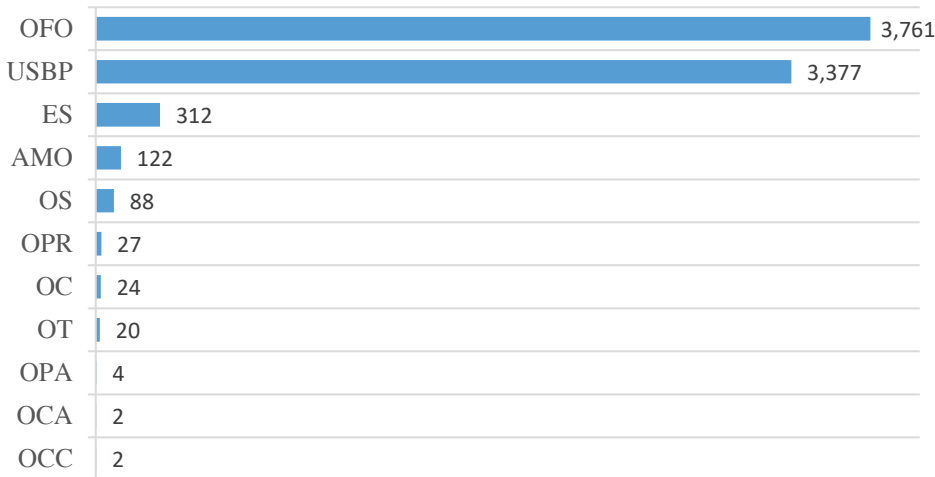
Allegations of misconduct involving employees within U.S. Border Patrol (USBP) and the Office of Field Operations (OFO) made up the vast majority, or 92 percent, of FY 2018 cases. This is not a surprising statistic, as employees within USBP and OFO make up 84 percent of the CBP workforce as a whole. Chart 2 shows the total number of cases by component.

Allegations against supervisors represented 20 percent of cases closed by LER. Allegations against LEOs represented 73 percent of cases closed by LER.
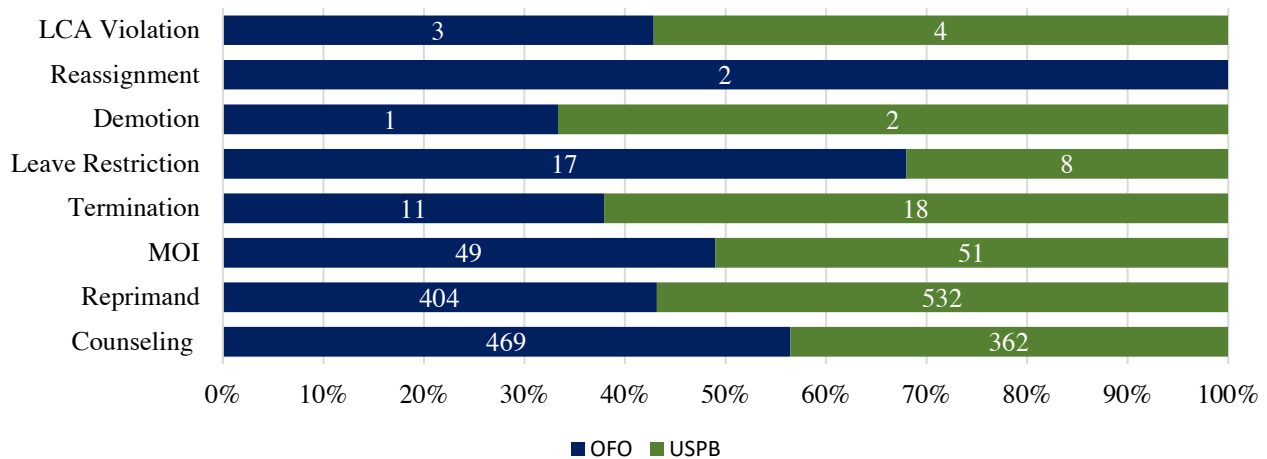
Management closed the majority of the 7,739 cases, or 54 percent, with a determination that either action was unwarranted or the allegation unsubstantiated (hereinafter referred to as unsubstantiated) this includes cases with outcomes reported as discipline not warranted or unfounded. Current CBP reporting requirements mandate employees report a variety of issues to the Joint Intake Center, regardless of whether the issue involves actionable misconduct. Another 172 cases closed without action, because the employee resigned or retired prior to issuance of a disciplinary action; 162 cases closed because the employee had multiple open cases and LER administratively closed one of the open cases to compile the allegations into a single case. In the remaining 3,222 cases, management made a disciplinary determination or issued a proposed disciplinary action.

Determinations

Management is authorized to make a disciplinary determination on certain matters without issuing a proposal. Examples of such actions are: reprimanding an employee[2], terminating a probationary employee, demoting a probationary supervisor, instructing an employee that they must cease and desist from certain actions by issuing a memorandum of instruction (MOI), and removing an employee who has violated a Last Chance Agreement (LCA).
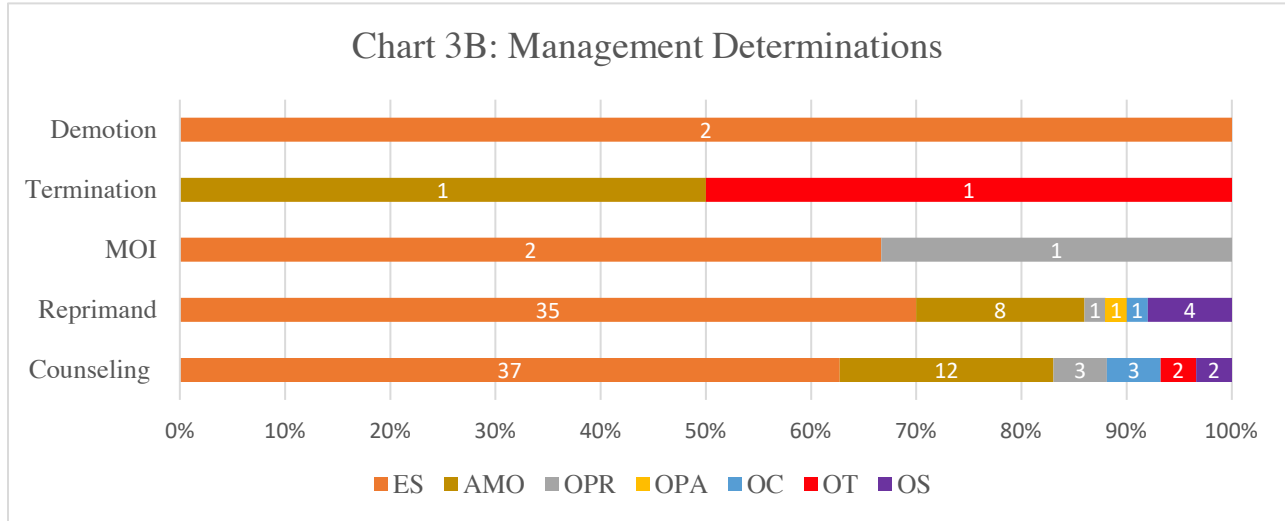
Management made these types of determinations in 2,049 cases in FY 2018. Charts 3A and 3B show the breakdown of disciplinary determinations by component. Counseling, which is informal discipline, accounted for 890 of the management determinations. Formal discipline accounted for 1,029. Collectively they represented 93 percent of management determinations.

Chart 3A: Management Determinations

	OFO	USPB
LCA Violation	3	4
Reassignment	2	
Demotion	1	2
Leave Restriction	17	8
Termination	11	18
MOI	49	51
Reprimand	404	532
Counseling	469	362

[2] The National Border Patrol Council CBA requires a proposal before an employee is reprimanded

Chart 3B: Management Determinations

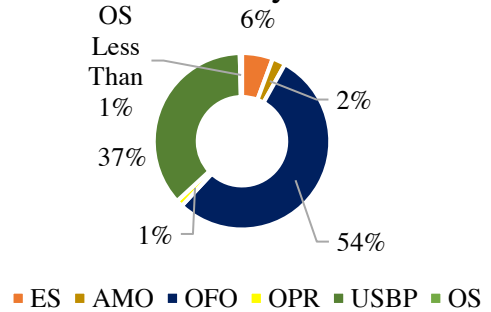|										
Demotion						2				
Termination	1					1				
MOI		2				1				
Reprimand		35				8	1 1 1	4		
Counseling		37			12		3 3 2 2			

Legend: ES, AMO, OPR, OPA, OC, OT, OS

The three most common types of misconduct resulting in a management determination in FY 2018 were the same as FY 2017; Failure to Follow Policy/Procedures, Failure to Safeguard Property, and Unprofessional Conduct. These three types of misconduct accounted for 38 percent of all determinations.

1. **Failure to Follow Policy**
   a. Thirty-two percent of Failure to Follow Policy cases CBP-wide resulted in a counseling and 37 percent resulted in a reprimand.
   b. Chart 4 shows the breakdown of failure to follow policy cases that resulted in a counseling or reprimand by component.
   c. OFO issued a counseling in roughly 34 percent of its failure to follow policy cases and a reprimand in 34 percent of failure to follow cases. The USBP issued a reprimand in 41 percent of its failure to follow policy cases.
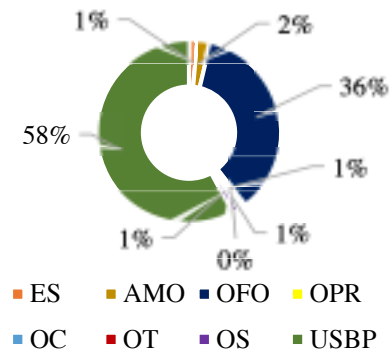
2. **Failure to Safeguard Property**
   a. Thirty-two percent resulted in counseling and 34 percent resulted in a reprimand.
   b. Chart 5 shows the breakdown of failure to safeguard property cases that resulted in a counseling or reprimand by component.

Chart 4: Failure to Follow Policy
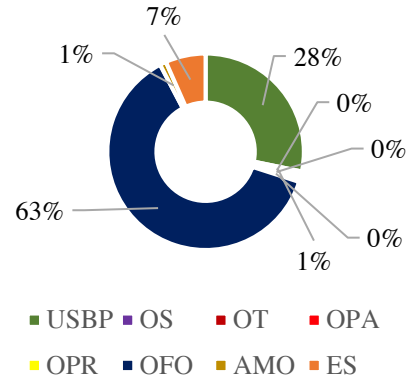
OS 6%
Less Than 1%
37%
1%
54%
2%

Legend: ES, AMO, OFO, OPR, USBP, OS

Chart 5: Safeguarding Property

1% 2%
36%
58% 1%
1% 1%
0%

Legend: ES, AMO, OFO, OPR, OC, OT, OS, USBP

c. Thirty eight percent of USBP and 43 percent of OFO Safeguarding Property cases resulted in a counseling.

3. **Unprofessional Conduct**
   a. Fifty-two percent resulted in a counseling and 24 percent resulted in a reprimand.
   b. Chart 6 shows the breakdown of unprofessional conduct cases that resulted in a counseling or reprimand by component.
   c. USBP issued a counseling in 54 percent of its unprofessional conduct cases, whereas OFO issued a counseling in 50 percent of its unprofessional conduct cases.

Chart 6: Unprofessional Conduct

■ USBP ■ OS ■ OT ■ OPA
■ OPR ■ OFO ■ AMO ■ ES

Proposed and Decided Discipline

Management issued proposals in 1,479 disciplinary cases in FY 2018. Disciplinary suspensions accounted for 847 of the proposals and reprimands accounted for 455. All together, they represented 89 percent of disciplinary proposals. It is important to note that employees who are members of the National Border Patrol Council bargaining unit must be issued a proposal to reprimand before a final reprimand can be issued to them. Therefore, USBP employees make up 69 percent of the cases with a proposed action. However, the number of proposed reprimands issued by USBP (455) is comparable to the number of reprimands issued by OFO (493).

Chart 7: Types of Decisions

- Adverse — 3%
- Non-Adverse — 40%
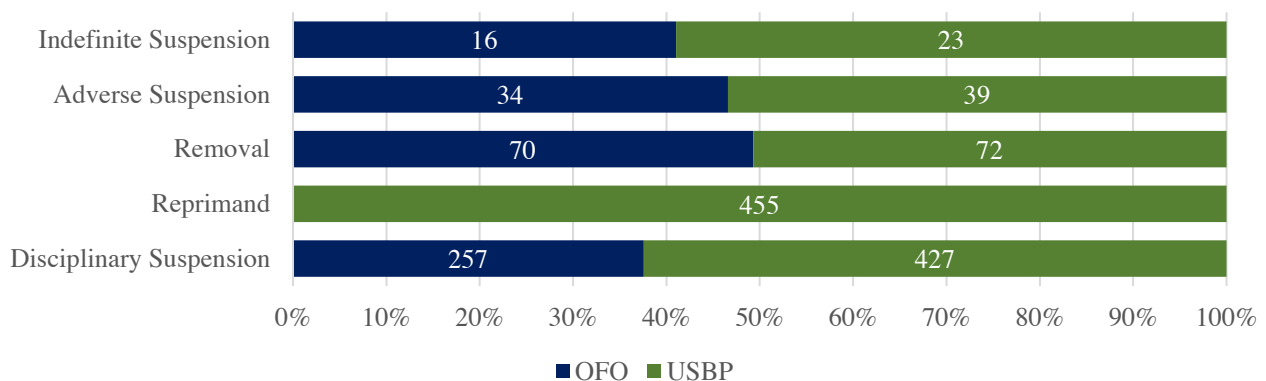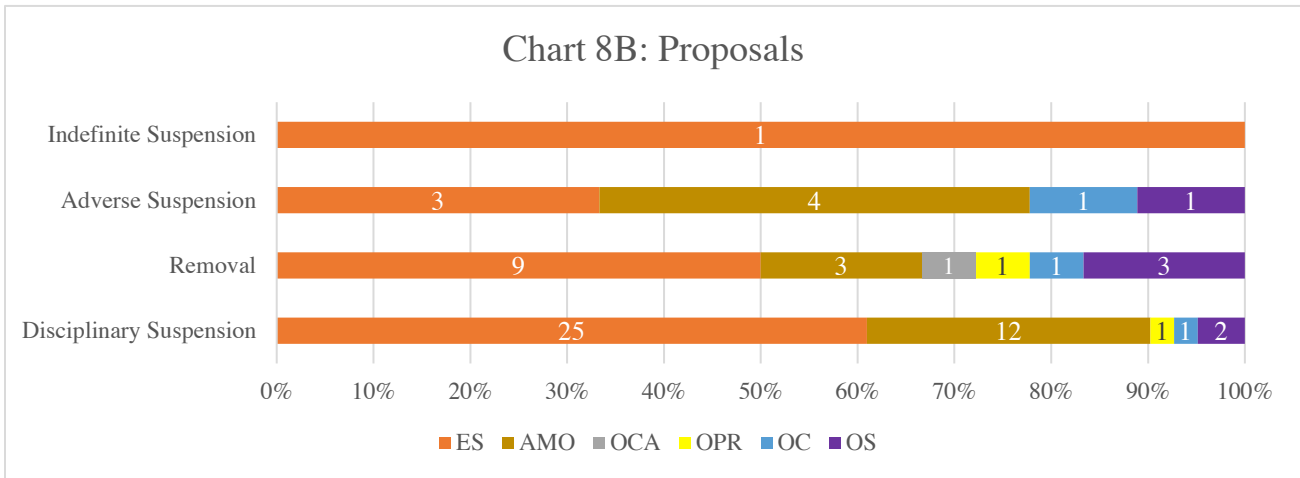- Unsubstantiated/Unwarranted — 57%
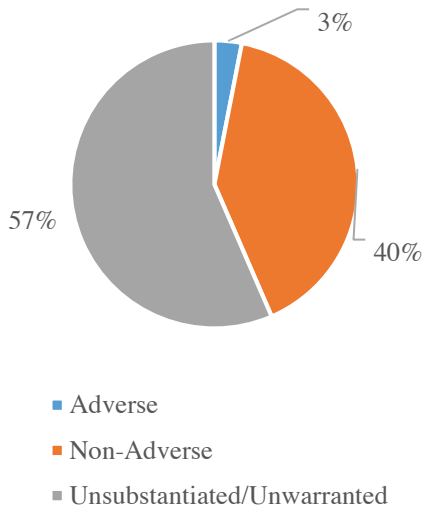
Deciding officials made decisions on 1,435 of the 1,479 proposals issued. This number excludes 44 cases where the employee retired or resigned before a decision was issued. Overall, deciding officials sustained a non-adverse action in 40 percent of decisions. Proposing officials proposed a non-adverse action in 80 percent of proposals. Chart 7 shows the breakdown of types of disciplinary actions decided across all components.

Charts 8A and 8B on the following page show the breakdown of disciplinary proposals by component.
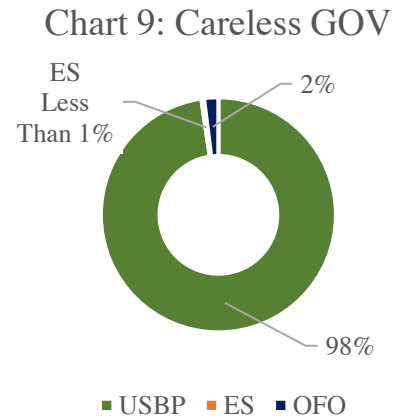
Chart 8A: Proposals

Category	OFO	USBP
Indefinite Suspension	16	23
Adverse Suspension	34	39
Removal	70	72
Reprimand		455
Disciplinary Suspension	257	427

■ OFO ■ USBP

Chart 8B: Proposals

Type	ES	AMO	OCA	OPR	OC	OS
Indefinite Suspension	1					
Adverse Suspension	3	4			1	1
Removal	9	3	1	1	1	3
Disciplinary Suspension	25	12		1	1	2

Legend: ■ ES ■ AMO ■ OCA ■ OPR ■ OC ■ OS

The most common types of misconduct that management issued proposals for in FY 2018 were similar to FY 2017, Careless Operation of a Government Owned Vehicle (GOV) (such as accidents) and Failure to Safeguard Property (including lost or stolen property). Together, these two types of misconduct accounted for 70 percent of the proposals issued.

1. **Careless Operation of a GOV**
   a. Fifty-one percent resulted in a proposed reprimand and 26 percent resulted in a proposed disciplinary suspension.
   b. Chart 9 shows the breakdown of Careless GOV Operation cases that resulted in a proposal by component.
   c. USBP issued a proposed reprimand in 51 percent of GOV accident cases.
   d. Eighty-four percent of cases resulted in a decision to implement non-adverse action
   e. Deciding officials determined the misconduct was unsubstantiated in three percent of Careless Operation of GOV cases.
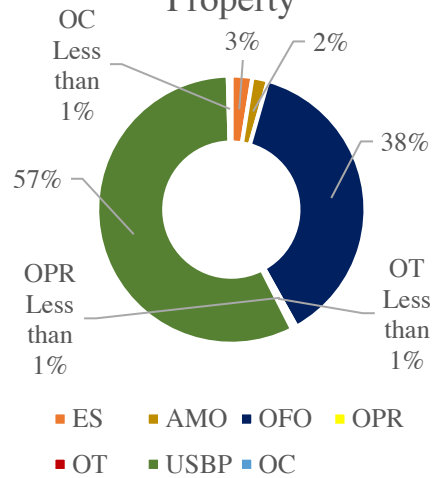
Chart 9: Careless GOV

ES Less Than 1%
2%
98%

Legend: ■ USBP ■ ES ■ OFO

2. **Failure to Safeguard Property**

   a. Forty percent of cases resulted in a reprimand, 20 percent resulted in a proposed non adverse suspension, and approximately 38 percent of cases received a counseling.

   b. Chart 10 shows the breakdown of lost or stolen property cases that resulted in a proposal by component.

   c. OFO issued a counseling in roughly half of the cases, whereas USBP issued a reprimand in roughly half of their cases.

   d. Forty-seven percent of decisions on these cases resulted in a decision to implement a non-adverse action.

   e. Deciding officials determined the misconduct was unsubstantiated or unwarranted in three percent of Safeguarding Property cases.

Chart 10: Safeguarding Property

OC Less than 1%
3%
2%
38%
57%
OPR Less than 1%
OT Less than 1%

- ES
- AMO
- OFO
- OPR
- OT
- USBP
- OC

Discipline Review Board (DRB) Actions

The DRB was established in 1999, under the former U.S. Customs Service, to promote fairness and consistency in the process for addressing serious cases of employee misconduct. In FY 2018, the primary function of the DRB was to review investigative reports of misconduct and propose adverse actions (a suspension of 15 days or more, demotion, or removal), when appropriate. In general, an adverse action was proposed when either the employee engaged in egregious misconduct or a higher penalty is justified under the principles of progressive discipline. The oversight, administration, and management of DRB process rests with HRM under HRPPD, LER Division. It should be noted that in October 2018 Commissioner McAleenan elected to update the Delegation. Part of that update changed the scope of the DRB. Today, the DRB primarily addresses cases of misconduct that fall under a specific type of misconduct, such as, but not limited to, domestic violence, false statements, founded civil liberties violations, aggravated driving under the influence cases and serious criminal activity both on- and off-duty. The Board is also utilized to process high profile cases at the election of senior leadership.

The DRB plays a crucial role in ensuring that the most serious misconduct is processed fairly and consistently. Proposals issued by the board are consistent with case law and Agency guidelines. Additionally, because DRB members hear CBP-wide cases, they seek to ensure Agency-wide consistency in their proposals. Finally, DRB panels are comprised of members from multiple offices, the members are able to gain insight into other offices and provide their perspective to one another when determining misconduct and the proposed penalty.

Membership

During the first part of FY 2018, DRB members were GS-14, GS-15, and Senior Executive Service (SES) managers and supervisors nominated by their respective Executive Assistant Commissioners and Chief. At that time, there were 111 Members. Beginning July 11, 2018, membership was restricted to only GS-15 and SES. There were 84 members in 2018. Chart 11 shows the breakdown of membership by component.

Individual DRB panels are comprised of three DRB members who are selected from the pool of candidates. LER strategically selects the members to ensure that each panel contains at least one member from OFO and one from USBP, as those components make up the majority of DRB cases.

To participate on panels, DRB members undergo thorough two-day training every other year. The training covers discipline theory, evidence, common misconduct, and case law. During the training the members participate on a mock DRB and observe real DRB panels.

Chart 11: DRB Members

Component	Members
USBP	28
OFO	28
AMO	8
OS	8
ES	6
OT	6
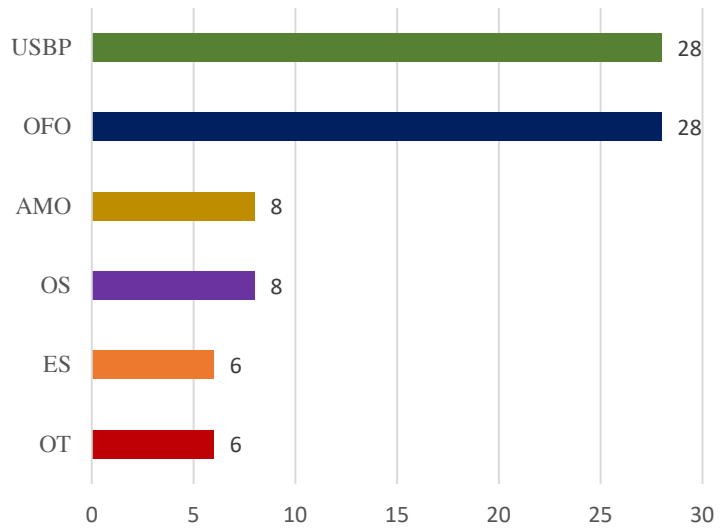
Case Intake

In FY 2018, LER Intake reviewed 1,649 allegations of misconduct from a variety of sources. Every case investigated by CBP's Office of Professional Responsibility (OPR), Department of Homeland Security (DHS) Office of Inspector General, or Immigration and Customs Enforcement (ICE) is referred to Intake for review. CBP OPR investigated 68 percent of the cases referred to LER Intake.

A large portion of cases, or 81 percent, was remanded to local management for review and possible initiation of disciplinary action in consultation with their servicing LER Specialist. Chart 12 shows that the number of cases referred to Intake has slowly decreased over the past five years until returning to the FY 2014 level in FY 2018. Chart 13 on the next page shows the overall number of cases presented to DRB over the five-year timeframe.
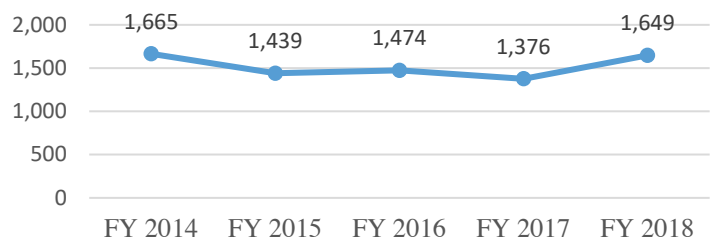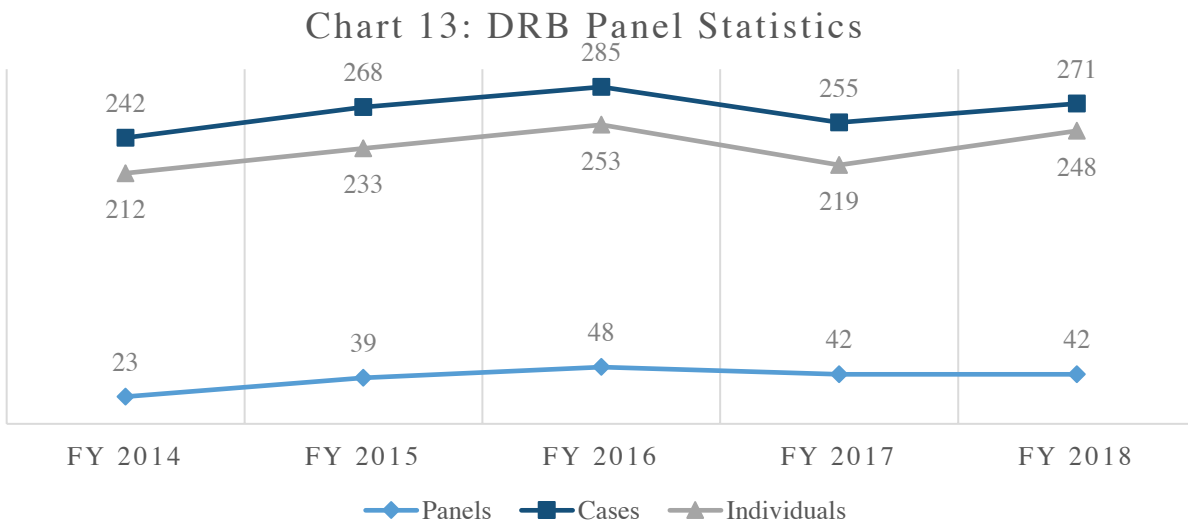
Chart 12: Cases Reviewed by Intake

FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
1,665	1,439	1,474	1,376	1,649

A total of 271 allegations of misconduct involving 248 employees were presented to 42 separate DRB panels in FY 2018.[3] This means that less than one half of one percent of employees were the subject of cases presented to a DRB. The type of employee most likely to have a case presented to a DRB is a non-supervisory GS-12 law enforcement officer with 15 years of federal service.

Supervisory misconduct presented to a DRB stayed the same this year with 15 percent of DRB cases involving supervisors. The rate of supervisory misconduct presented to a DRB was increasing since FY 2013, with a high of 39 percent in FY 2015. Supervisors within USBP made up 55 percent of the supervisory cases presented to DRB this fiscal year.

While the case Intake process will remain the same in the coming fiscal years, CBP anticipates the number of cases remanded to local management for action to increase and the number of cases presented to the DRB to decrease. This prediction is predicated on CBP implementing changes to the scope of the cases presented to the DRB in FY 2019 to ensure that discipline corresponds consistently with the severity of the offense. Specifically, the DRB will no longer be penalty based; instead, the DRB will review cases involving serious misconduct that harms the agency's mission in broad ways and cuts across all geographic and component lines. All other cases will be remanded to local management for review and action as warranted.

Chart 13: DRB Panel Statistics

	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Panels	23	39	48	42	42
Cases	242	268	285	255	271
Individuals	212	233	253	219	248

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[3] When an employee is the subject of more than one investigative report, the case materials are combined and a single proposal notice is issued.

Allegations of misconduct involving employees within USBP and OFO made up the majority, or 90 percent of FY 2018 DRB cases. Chart 14 shows the number of DRB cases by component for the last three fiscal years.
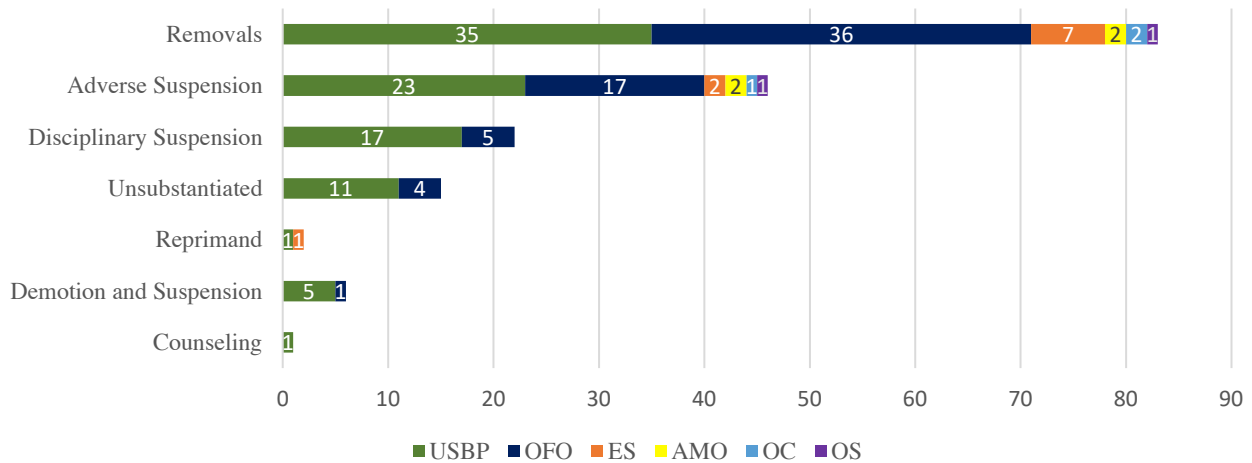
Chart 14: DRB Cases by Component

DRB Proposals/Determinations

Most cases, or 76 percent, received a proposed adverse action from the DRB. That is down from 87 percent in FY 2017. Chart 15 shows the breakdown by component for each type of DRB proposal/determination. It also shows the total number of each type of DRB proposal/determination on the right.

Chart 15: DRB Proposals Determinations

Category	USBP	OFO	ES	AMO	OC	OS
Removals	35	36	7	2	2	1
Adverse Suspension	23	17	2	2	1	1
Disciplinary Suspension	17	5				
Unsubstantiated	11	4				
Reprimand	1		1			
Demotion and Suspension	5	1				
Counseling	1					

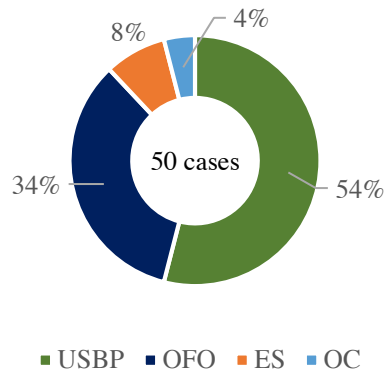Legend: ■ USBP ■ OFO ■ ES ■ AMO ■ OC ■ OS

The most common types of misconduct the DRB issued proposals for in FY 2018 were the same as FY 2017:

1. Dishonesty
   a. Ninety-eight percent of cases where DRB found that an employee engaged in dishonesty resulted in a proposed adverse action.
   b. Chart 16 shows the breakdown of dishonesty cases by component.
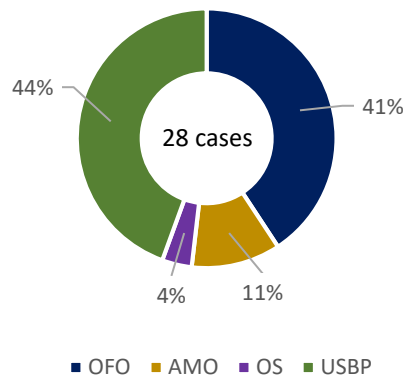   c. Real Case – DRB proposed the removal of SBPA who colluded to have false firearms scores entered into FACTS.

2. Driving Under the Influence
   a. Eighty-nine percent of cases where DRB found that an employee engaged in Driving Under the Influence (DUI) resulted in a proposed adverse action.
   b. Chart 17 shows the breakdown of DUI cases by component.
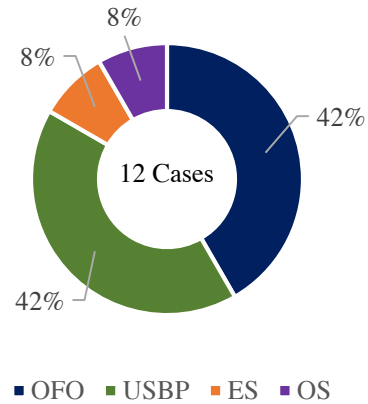   c. Real Case – DRB proposed the removal of a CBPO charged with

Chart 16: Dishonesty

50 cases

- 54% USBP
- 34% OFO
- 8% ES
- 4% OC

Legend: ■ USBP ■ OFO ■ ES ■ OC

Chart 17: DUI

28 cases

- 41% OFO
- 11% AMO
- 4% OS
- 44% USBP

Legend: ■ OFO ■ AMO ■ OS ■ USBP

Felony DUI after crashing into another vehicle while driving the wrong way on the interstate.

3. Misuse of Position
a. One hundred percent of cases where DRB found misuse of position resulted in a proposed adverse action.
b. Chart 18 shows the breakdown of Misuse of Position cases by component.
c. Real Case – DRB proposed the removal of an IT Specialist who received gratuities from IT vendors and manipulated contract specifications to benefit the vendor who was providing him with gifts.
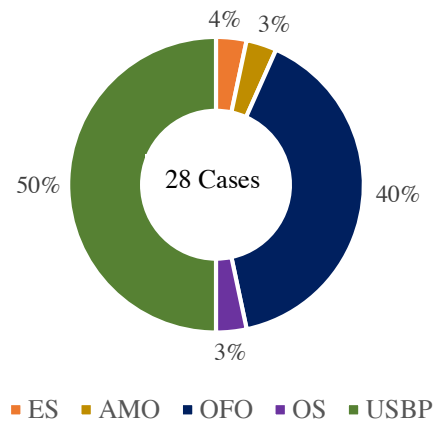
4. Failure to Follow Policy
a. Eighty-two percent of cases where DRB found failure to follow policy resulted in a proposed adverse action.
b. Chart 19 shows the breakdown of Failure to Follow Policy cases by component.
c. Real Case – DRB proposed the removal of a BPA who took government-owned exercise equipment from a Station Crossfit tent, and used his GOV to transport the equipment.

Chart 18: Misuse of Position

8%
8%
42%
12 Cases
42%

■ OFO ■ USBP ■ ES ■ OS

Chart 19: Failure to Follow Policy

4% 3%
50%
28 Cases
40%
3%

■ ES ■ AMO ■ OFO ■ OS ■ USBP

5. Misuse of a Government Computer

a. One hundred percent of cases where DRB found that an employee misused a government computer to search for pornography resulted in a proposed adverse action.

b. Chart 20 shows the breakdown of Misuse of a Government Computer cases by component.

c. Real Case DRB proposed a 30 day suspension to a CBPO who accessed sexually explicit material on his government computer.

Chart 20: Misuse of Computer

10 Cases

11%

45%

44%

■ ES ■ OFO ■ USBP
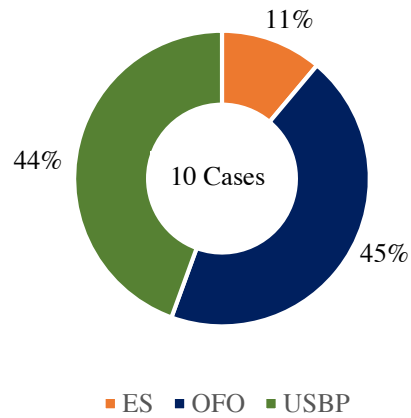
Due to the DRB re-scope many of these categories of misconduct are unlikely to remain top categories of misconduct addressed by DRB in FY 2019. Of those listed above, only Dishonesty, and some DUI cases remain categories of misconduct to be addressed by DRB.
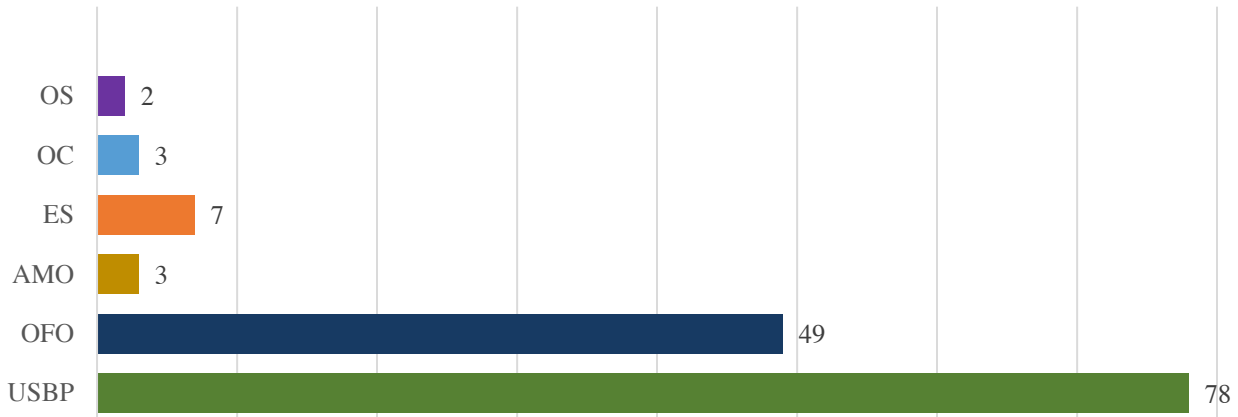
Decisions on DRB Proposals

In FY 2018, LER closed a total of 209 DRB cases, regardless of when the DRB panel convened or in what fiscal year the proposal was served. For example, a case presented in FY 2017 could potentially have a decision issued in FY 2018. The traversing of fiscal years is attributable to several factors, which include due process requirements, requests for extensions, and other case-related issues.

Excluding the 36 cases that were combined, the 14 cases where the misconduct was unsubstantiated by the DRB, and the 17 cases where the employee retired or resigned prior to a decision being issued, deciding officials issued decisions on 142 DRB proposals. Chart 21 shows the number of decisions issued by component.

Chart 21: Decisions

Component	Value
OS	2
OC	3
ES	7
AMO	3
OFO	49
USBP	78

Overall, deciding officials sustained an adverse action in 58 percent[4] of cases in which the DRB proposed adverse actions. This was 66 percent the previous year. Due to the consideration of mitigating Douglas factors, along with additional information provided during the reply period, it is not surprising that such a large number of proposed adverse actions are mitigated. Chart 22 shows the breakdown of types of disciplinary actions decided across all components.

Chart 22: Types of Decisions

- Adverse — 58%
- Unsubstantiated — 7%
- Non-Adverse — 35%
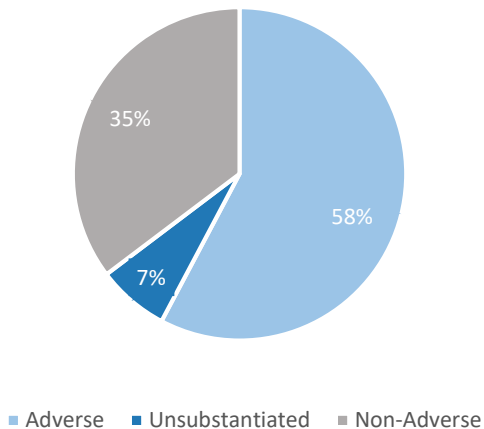
Deciding officials determined that 14 DRB proposals did not warrant disciplinary action. USBP represented 64 percent of the cases that were closed as not warranting disciplinary action.

Deciding officials entered into settlement agreements at the decision stage in 49 percent of DRB cases in which a proposal was issued. One benefit of settlement agreements is that the employee waives their right to appeal the matter as part of the agreement. Thirty-five percent of settled cases resulted in the deciding official determining that an adverse action was warranted but allowing the employee to serve a non-adverse suspension due to entering into a settlement agreement.

Rates of mitigation on common misconduct DRB issued proposals for:

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[4] This number includes 16 cases where the deciding official sustained an adverse action, but implemented a non-adverse action due to the employee entering into a settlement agreement.

1. **Dishonesty**
   a. Seventy percent of cases where DRB found dishonesty resulted in a decision to implement adverse action.
   b. Deciding officials determined the misconduct was unsubstantiated in three dishonesty cases.
   c. The employee resigned prior to a decision in six cases.
2. **DUI**
   a. Eighty percent of cases where DRB found that an employee engaged in DUI and proposed adverse action resulted in a decision to implement adverse action.
      i. USBP sustained adverse actions for proposals involving DUI in 50 percent of cases, as did AMO, whereas OFO sustained adverse action in 75 percent of cases.
   b. No DUI cases were closed as unsubstantiated.
3. **Misuse of Position**
   a. Fifty percent of cases where DRB found misuse of position and proposed adverse action resulted in a decision to implement adverse action.
   b. USBP deciding officials determined the misconduct was unsubstantiated in one misuse of position case.
4. **Failure to Follow Policy**
   a. Seventy-seven percent of cases where DRB found failure to follow policy and proposed adverse action resulted in a decision to implement adverse action.
      i. USBP sustained adverse actions for proposals involving failure to follow policy in 90 percent of cases, whereas OFO sustained adverse action in 60 percent of cases.
   b. No deciding official determined the misconduct was unsubstantiated for a failure to follow policy case.
5. **Misuse of a Government Owned Vehicle**
   a. Eighty-three percent of cases where DRB found misuse of a GOV and proposed adverse action resulted in a decision to implement adverse action.
      i. USBP sustained adverse actions for proposals involving misuse of a GOV in 62 percent of cases.
   b. No misuse of a GOV cases were closed as unsubstantiated.

Timeliness

Chart 23: DRB Case Processing Times
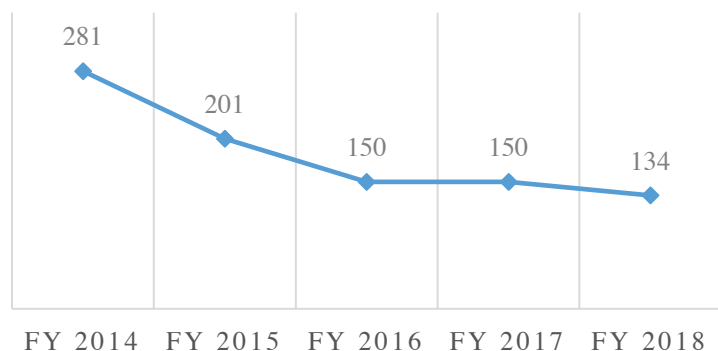
281
201
150
150
134

FY 2014   FY 2015   FY 2016   FY 2017   FY 2018

In FY 2015, HRM implemented several process improvements and worked collaboratively with stakeholders to refine the discipline process in an effort to improve timeliness of actions. HRM developed a case processing goal of 180 days for DRB cases. After meeting that goal in 2016 and 2017 the timeline was reduced to 155 days in FY 2018. As of September 30, 2018, the average case processing time for FY 2018 DRB cases was 134 days. However, as more FY 2018 cases continue to close, this number will likely change. HRM expects it will remain below the established 155-day case processing goal. Chart 23 shows the dramatic decrease in DRB case processing times since FY 2014.

Appeals

LER closed a total of 449 DRB cases during FY 2015 and FY 2016. Both fiscal years had roughly the same rate of cases appealed, with an average of 23 percent of DRB cases being appealed each fiscal year. Of the cases that are appealed, 57 percent were appealed to arbitration by the union. The next most frequent venue for appeal is the Merit Systems Protection Board, with 38 percent of cases appealed there.

Ninety-one percent of appealed DRB cases from FY 2015 and FY 2016 resulted in a positive outcome for CBP. Either the Agency's action was fully sustained on appeal, the employee retired or resigned, or the employee agreed to a LCA. CBP's disciplinary action was fully upheld in only 32 percent of appealed cases. This rate is not surprising, as many cases appealed to arbitration result in arbitrators splitting decisions to appease the parties. Only 8 percent of cases were fully reversed on appeal.

It is of particular interest to note that approximately 6 percent of appealed DRB cases from FY 2015 and FY 2016 were still pending resolution at the third party stage at the close of FY 2017.

Employee Arrests

As an Agency charged with law enforcement activities, CBP regards any violation of law by its employees as being inconsistent with and contrary to its law enforcement mission. The CBP Standards of Conduct provide notice that all CBP employees, whether they are on or off-duty, must cease from engaging in any activities which violate law.

Contrary to these Standards, an unacceptable number of CBP employees are arrested each year for violating federal, state, or local law. Each arrest has the potential to compromise CBP's mission and public image, albeit only a very small percentage of the overall CBP workforce was arrested in FY 2018. There were 268 CBP employees arrested in FY 2018. There were 11 employees arrested twice; one employee arrested four times; and one employee arrested five times, resulting in 286 total arrests. Chart 24 shows the breakdown of arrests by component. The Other category on Chart 24 includes employees from Air and Marine Operations (AMO), Enterprise Services (ES), Office of Professional Responsibility (OPR), and Operations Support (OS).

Chart 24: FY 2018 Arrests

Legend: ■ OFO ■ USBP ■ Other
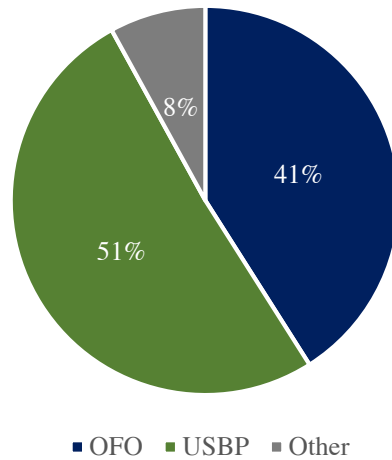
Twenty-seven of the 286 arrests involved female employees and 27 arrests involved employees in supervisory positions.

Chart 25: Arrests

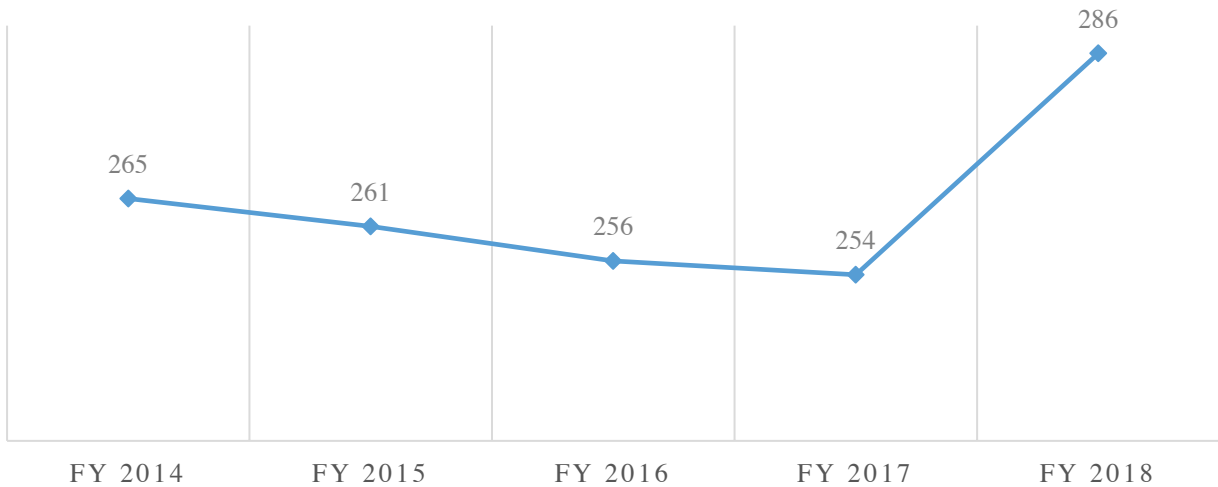|	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Arrests	265	261	256	254	286

Chart 25 shows that the number of arrests descended steadily from FY 2014 to FY 2017, but increased by 11 percent from FY 2017 to FY 2018.

Table 1: Employee Arrest Totals by Arrest Type – FY 2018 Workforce total for FY 2018 =	
Type of Arrest	**Number of Arrests**
Drug/Alcohol-Related Misconduct	129
Domestic/Family Misconduct	57
Assault	9
Corruption	7
Impeding the Criminal Justice System	17
Property Crimes	6
Traffic/Driving Misconduct	8
Minor Offenses	1
Crimes Involving Children	15
Threatening Behavior	3
Weapons Violations	8
White Collar Crime	4
Miscellaneous Misconduct	12
Sexual Misconduct	7
Mission-Related Misconduct	1
Violent Crimes	2
Total Arrests:	**286**

*This data is current as of May 8, 2019

As shown on Table 1, drug/alcohol-related misconduct was the most common type of arrest. Breaking this category down, alcohol-related driving offenses, with 94 arrests, were the most common type of arrest, followed by domestic/family violence with 57 arrests; 35 arrests were attributable to other drug or alcohol-related misconduct. These three categories were also the most common types of arrest in FY 2017.

In FY 2018, LER closed a total of 249 cases involving employee arrests, regardless of when the employee was arrested. For instance, a decision could be issued in FY 2018 on an employee who was arrested in FY 2017. The traversing of fiscal years is attributable to several factors, which include due process requirements, requests for extensions, and other case-related issues.
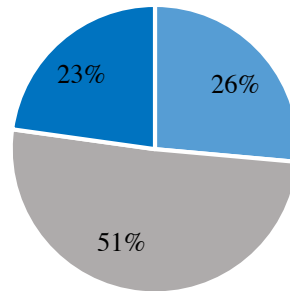
Agency deciding officials issued decisions on 193 cases involving employee arrests. This number does not include 23 cases where the employee retired or resigned prior to a decision being issued or 33 cases that were combined with other disciplinary cases on the same employee.

Overall, deciding officials sustained an adverse action in 26 percent of decisions on cases involving arrests. Chart 26 on the next page shows the breakdown of types of disciplinary actions decided across all components.

Deciding officials entered into settlement agreements in 21 percent of arrest cases. One benefit of settlement agreements is that the employee waives their right to appeal the matter as part of the agreement terms. Only 10 percent of settled cases resulted in the deciding official determining that an adverse action was warranted, but allowing the employee to serve a non-adverse suspension as agreed upon in the settlement agreement.
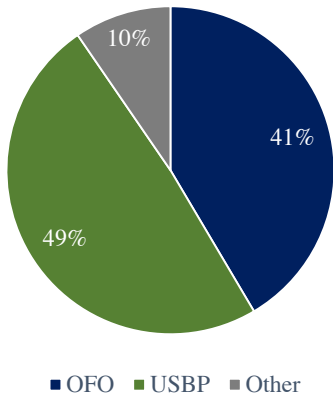
Chart 26: Types of Decisions

- Adverse
- Non-adverse
- Unsubstantiated/Unwarranted

Alcohol-Related Driving Offenses

There were 94 arrests CBP-wide involving alcohol-related driving offenses, which accounted for 33 percent of all off-duty arrests of CBP employees. The FY 2018 total represents a slight decrease from FY 2017 when there were 96 alcohol-related driving arrests CBP-wide. Chart 27 illustrates the breakdown of alcohol-related driving arrests by component. The Other category on Chart 27 includes employees from AMO, ES, OPR, and OS.
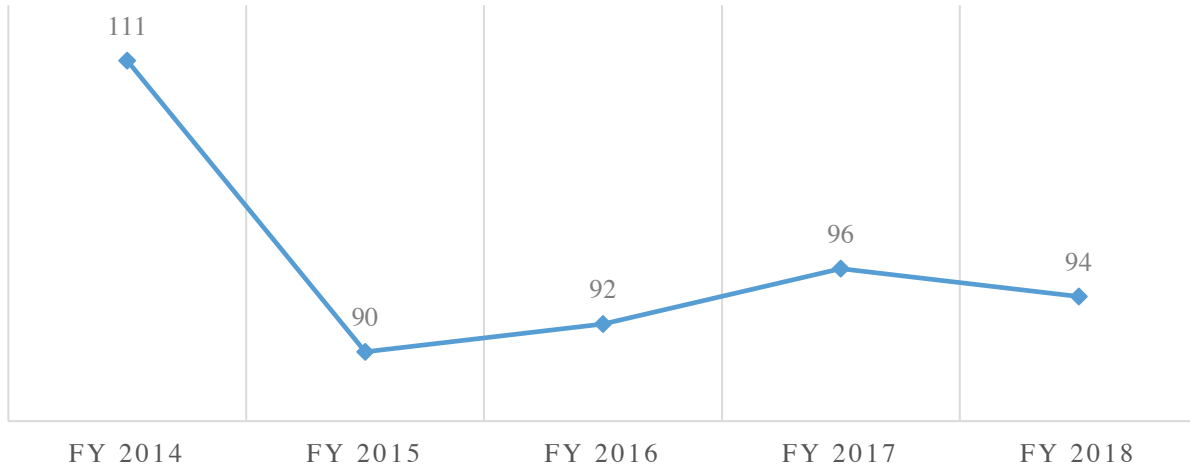
Chart 27: FY 2018 Alcohol-Related Driving Offenses

- OFO
- USBP
- Other

Eighty-eight employees arrested for alcohol-related driving offenses were LEOs, while six employees occupy non-law enforcement positions. Seven alcohol-related driving arrests involved female employees and six involved supervisors.

Chart 28 shows the number of alcohol-related driving arrests from FY 2014 to FY 2018.

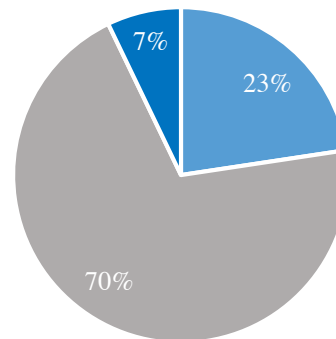### Chart 28: Alcohol-related Driving Arrests By Year

In FY 2018, LER closed 109 cases involving alcohol-related driving offenses, regardless of when the employee was arrested.

Agency deciding officials issued decisions on 84 cases involving alcohol-related driving offenses. This number does not include 6 cases where the employee retired or resigned prior to a decision being issued or 19 cases that were combined with other disciplinary cases on the same employee.

Overall, deciding officials sustained an adverse action in 23 percent of cases involving alcohol-related driving offenses.

Chart 29 shows the breakdown of types of disciplinary actions decided across all components.

Chart 29: Types of Decisions

■ Adverse ■ Non-Adverse ■ Unsubstantiated/Unwarranted

Component Office Response to Alcohol-Related Driving Offenses

On March 9, 2015, USBP implemented the Standardized Post-Employee Arrest Requirements (SPEAR) process to expediently and consistently apply administrative action to employee's post-alcohol-related driving arrest.

Likewise, on July 15, 2016, OFO implemented a DUI Board process to provide consistent and expeditious review of alcohol-related driving incidents.

Each process consists of a panel with the delegated authority to propose the appropriate disciplinary suspension of 1 to 14 days, or an indefinite suspension. Each panel reviews the facts of the case, conducts a misconduct evaluation to determine whether there is preponderant evidence to prove the underlying misconduct and whether there is a nexus between the misconduct and efficiency of the service, and then propose a reasonable penalty, if warranted. For those DUI cases that also involve aggravating factors, the matter will be referred to DRB.

Chart 30 shows the number of USBP alcohol-related driving arrests from FY 2014 to FY 2018.
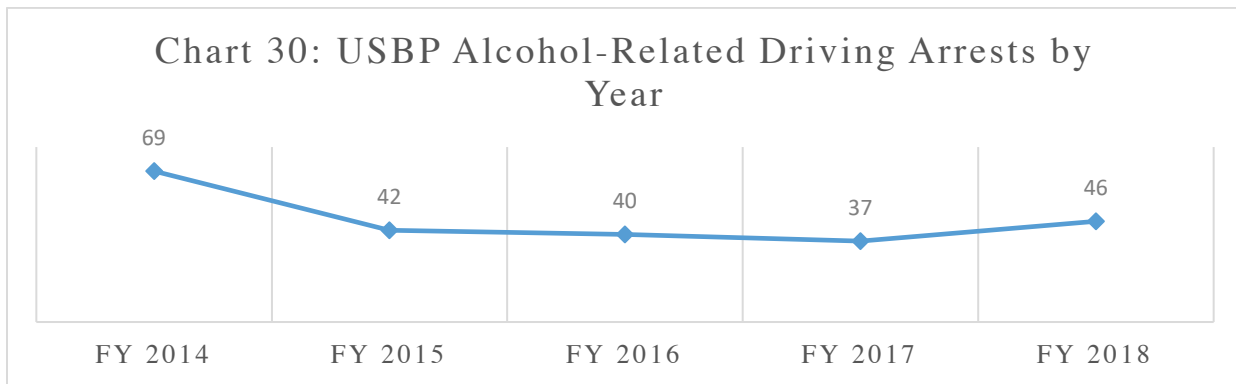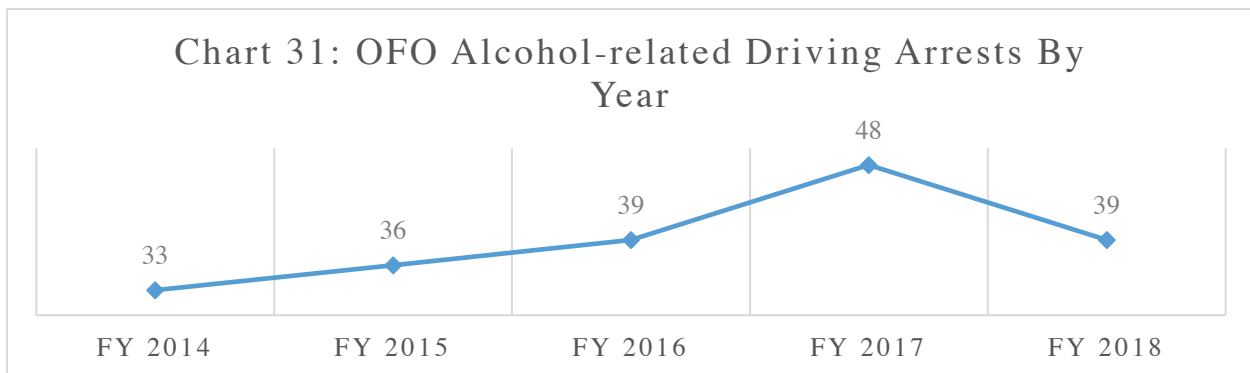
Chart 30: USBP Alcohol-Related Driving Arrests by Year

FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
69	42	40	37	46

Chart 31 on the following page shows the number of OFO alcohol-related driving arrests from FY 2014 to FY 2018.

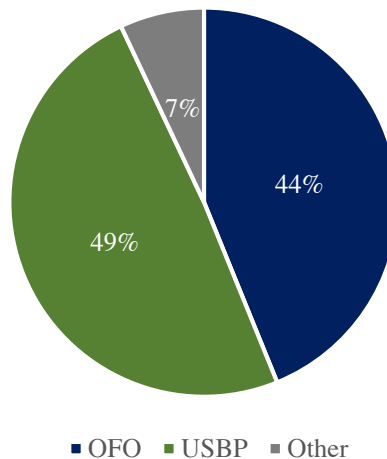**Chart 31: OFO Alcohol-related Driving Arrests By Year**

FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
33	36	39	48	39

Domestic Violence-Related Offenses

Arrests for domestic violence-related offenses accounted for 20 percent of all off-duty arrests of CBP employees and constituted the second largest type of criminal misconduct. There were 57 domestic violence-related arrests in FY 2018. The FY 2018 total represents a 10.5 percent increase from FY 2017, when there were 51 domestic violence-related arrests.

Chart 32 shows the breakdown of domestic violence arrests by component. The Other category on Chart 32 includes employees from AMO, ES, OPR, and OS.
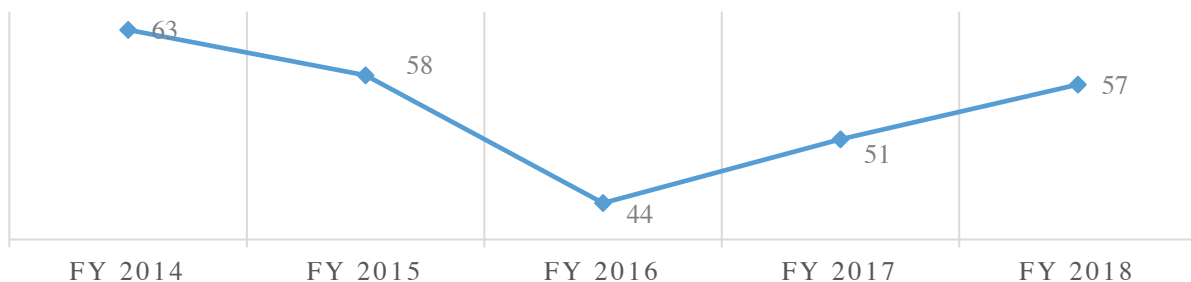
Chart 32: Domestic Violence Arrests by Component

- OFO - USBP - Other

Forty-nine out of 57 arrests involved LEOs. Eight female employees were arrested for domestic violence. Six of the employees arrested in FY 2018 for domestic violence held supervisory positions.

Chart 33 shows the number of domestic violence arrests from FY 2014 to FY 2018.

Chart 33: Domestic Violence Arrests by Year

In FY 2018, LER closed 44 cases involving domestic violence, regardless of when the employee was arrested.

Agency deciding officials issued decisions on 32 cases solely involving domestic violence, regardless of when the employee was arrested. Additionally, in seven cases the employee retired or resigned prior to a decision being issued. Also, there were five cases that included discipline in addition to domestic violence or were combined with subsequent other disciplinary cases on the same employee.

Chart 34 shows the breakdown of types of disciplinary actions decided across all components. Overall, deciding officials sustained an adverse action in 28 percent of decisions on cases involving domestic violence. This is an increase from FY 2017, when 19 percent of domestic violence decisions resulted in an adverse action. The number of cases closed as unsubstantiated or unwarranted decreased from 37 percent in FY 2017 to 31 percent in FY 2018. This shows that deciding officials are taking more serious disciplinary action on domestic violence cases.

Chart 34: Types of Decisions

■ Adverse ■ Non Adverse ■ Unsubstantiated/Unwarranted
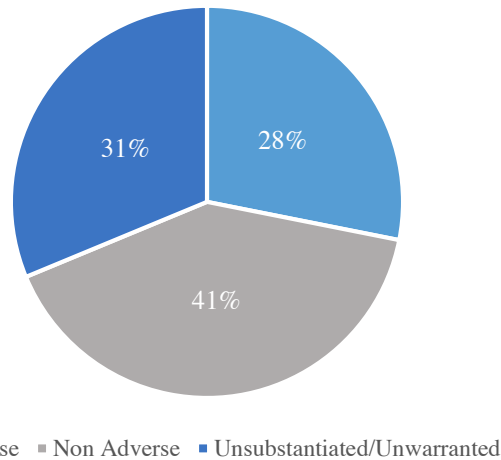
Deciding officials determined that 10 arrests for domestic violence did not warrant disciplinary action. USBP represented 70 percent of the cases that were closed as not warranting disciplinary action.
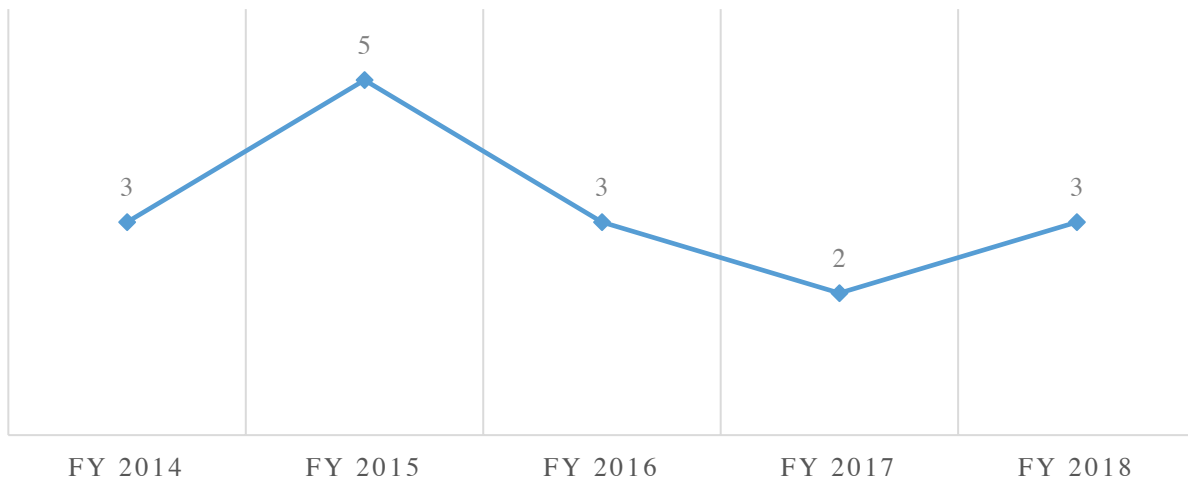
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Mandatory Removals of LEOs for Felony Convictions

Pursuant to 5 U.S.C. § 7371, LEOs convicted of a federal or state felony are subject to mandatory removal from the federal service. FY 2018 discipline data reflects that three CBP employees were removed under this authority. Two were USBP employees assigned to stations aligned under the Detroit and San Diego Sectors. One was a CBPO employee assigned to a port within San Diego Field Operations.

Chart 35 shows the number of mandatory removals for felony convictions from FY 2014 to FY 2018.

Chart 35: Mandatory Removals Of Law Enforecement Officers For Felony Convictions By Year

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Indefinite Suspensions

An indefinite suspension is an adverse action that temporarily places an employee in a non-pay and non-duty status while awaiting further action. Indefinite suspensions are typically imposed when the Agency receives information leading to a reasonable belief that an employee committed criminal misconduct for which the employee may be imprisoned. Indefinite suspensions may also follow the suspension or revocation of a security clearance when such clearance is a requirement of the employee's position. As with all adverse actions, the employee is entitled to advance written notice of the Agency's proposal of the indefinite suspension and due process procedures.

The Agency must provide the employee with notice of the specific event that will terminate the indefinite suspension (e.g., the employee was found not guilty of the criminal charges) in its notice of suspension. Agencies must terminate the suspension promptly upon completion of the event(s) identified at the time it imposed the suspension. Placing an employee on indefinite suspension does not preclude an Agency from taking subsequent administrative action following the conclusion of criminal or administrative proceedings.

In FY 2018, CBP processed 37 indefinite suspension actions; 21 from USBP, 15 from OFO, and 1 from Enterprise Services. Chart 35 shows indefinite suspensions by component.

A review of the discipline data related to indefinite suspensions for FY 2017 revealed that the use of indefinite suspensions increased in FY 2018 with 37 processed compared to 26 processed in FY 2017.
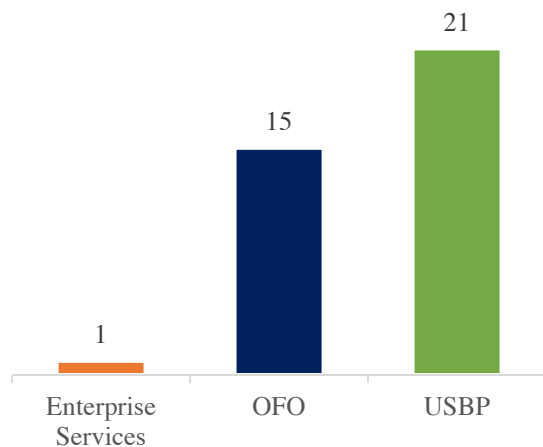
Chart 35: Indefinite Suspensions

Chart 36 on the following page provides historical data for indefinite suspension actions, the number of which has fluctuated through the years.

Chart 36: Indefinite Suspensions By Year

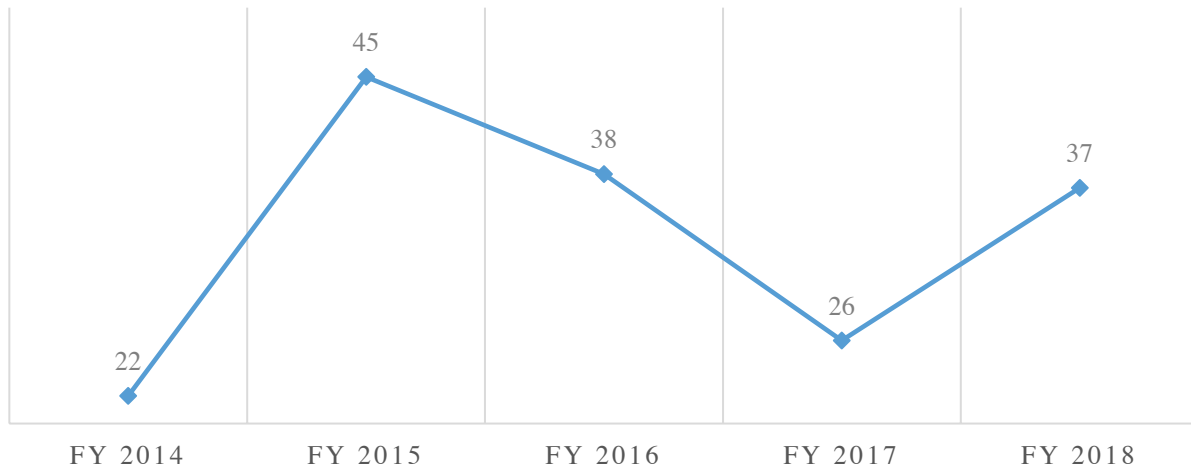| FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
22	45	38	26	37

Table 2 identifies the criminal offenses associated with the indefinite suspension in FY 2018.

Table 2: Criminal Offenses Supporting Indefinite Suspensions in FY 2018		
Employee Position	**Grade Level**	**Criminal Offense**
Border Patrol Agent	GS-12	Possession of a Controlled Substance and Being Under the Influence of Unknown Narcotics.
Border Patrol Agent	GS-12	Attempted Enticement of a Minor and Possession of Child Pornography
Border Patrol Agent	GS-12	Concealed and/or Omitted Information During the Application Process for Naturalization
Border Patrol Agent	GS-12	Production of Child Pornography.
Border Patrol Agent	GS-12	Illegal Sales of Counterfeit Merchandise
Border Patrol Agent	GS-12	Criminal Mischief
Border Patrol Agent	GS-12	Sexual Assault
Border Patrol Agent	GS-12	Aggravated Assault and Endangering a Child
Border Patrol Agent	GS-12	Knowingly Distributing Child Pornography
Border Patrol Agent	GS-12	Deprivation of Rights Under Color of Law and Falsification of Records in Federal Investigations
Border Patrol Agent	GS-12	Enticement of a Minor, Receipt of Child Pornography, Access of Child Pornography with Intent to View
Border Patrol Agent	GS-12	Aggravated Assault w/Deadly Weapon and Assault Family/Household Member Impeding Breath/Circulation of Blood
Border Patrol Agent	GS-12	Aggravated assault with a deadly weapon.
Border Patrol Agent	GS-12	Theft of property and tampering with governmental record to defraud/harm
Border Patrol Agent	GS-12	Evading arrest with a motor vehicle
Border Patrol Agent	GS-12	Conversion of U.S. Property and False Entry in Accounts and Records
Border Patrol Agent (Intelligence)	GS-12	Conspiracy to Possess with Intent to Distribute Marijuana and Aiding and Abetting, and Use/Carrying of Firearm During a Drug Crime, and Bribery: Public Official Accepting a Bribe

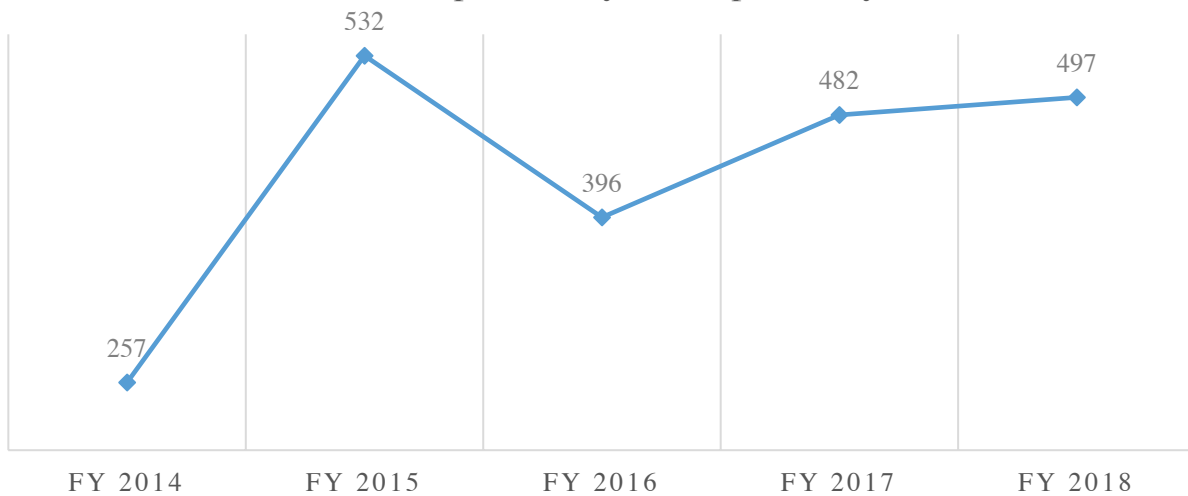| Table 2: Criminal Offenses Supporting Indefinite Suspensions in FY 2018		
Employee Position	**Grade Level**	**Criminal Offense**
CBP Agriculture Specialist	GS-12	Fraud in Connection with a Major Disaster or Benefits, Wire Fraud, and Engaging in Monetary Transactions with Criminal Derived Property
CBP Officer	GS-9	Vehicular Manslaughter
CBP Officer	GS-11	Felonious Assault, and Carrying or Possessing a Firearm When Committing or Attempting to Commit a Felony
CBP Officer	GS-12	False Statements to Department of Housing Development to Obtain Home
CBP Officer	GS-12	Sexual Battery
CBP Officer	GS-12	Possession of Child Pornography
CBP Officer	GS-12	Child pornography
CBP Officer	GS-12	Forcibly Assaulting, Impeding, Intimidating and Interfering with a Federal Officer
CBP Officer	GS-12	Burglary of a Habitation and Robbery
CBP Officer	GS-12	Criminal Sexual Conduct
CBP Officer	GS-12	False Statement or Representation, and False Statements in an Application for Passport
CBP Officer	GS-12	Forcibly Assaulting, Impeding, Intimidating and Interfering with a Federal Officer
CBP Officer	GS-12	Forcibly Assaulting, Impeding, Intimidating and Interfering with a Federal Officer
CBP Officer (Prog Manager)	GS-13	Cruelty to Animals, Hunting or Discharge of Firearms in Certain Places Prohibited, Dumping trash, companion animal, etc., on highway, public or private property
Law Enforcement Communications Assistant	GS-6	Obtaining Controlled Substances by Fraud
Supervisory Border Patrol Agent	GS-13	Lewd and Lascivious Acts with a Child
Supervisory Border Patrol Agent	GS-13	Murder
Supervisory Border Patrol Agent	GS-13	Capital Murder
Supervisory Border Patrol Agent (CDI)	GS-13	Making a False Declaration before a Grand Jury
Supervisory CBPO	GS-13	Deprivation of Rights Under Color of Law

Supervisory Discipline

CBP supervisors are expected to exemplify the highest standards of integrity and professionalism and when they fail to meet these expectations, supervisors are also subject to discipline. A review of the FY 2018 discipline data for supervisory personnel revealed an increase in the number of cases involving supervisory discipline in reference to FY 2017; 497 actions were processed in FY 2018 compared to 482 in FY 2017. Chart 37 shows supervisory discipline over the past five years.

Chart 37: Supervisory Discipline By Year

FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
257	532	396	482	497

The most common type of misconduct committed by supervisory employees was failure to safeguard government-issued property. The other most common types of misconduct committed by supervisory employees were unprofessional behavior or statements, not exercising due caution in the operation of a GOV, failing to follow policy, and careless performance of or inattention to duties.

Use of Force Allegations

Every day, CBP's uniformed professionals face life-threatening confrontations as they work to secure America's borders. When confronted with dangerous situations, officers and agents strike a delicate balance between officer safety and exercising Use of Force (UoF) in a manner consistent with Agency policy. Each year, CBP receives and reviews hundreds of allegations pertaining to UoF incidents. When these cases involve excessive UoF or civil rights abuse allegations and prosecution is declined by the U.S. Attorney's Office or the local prosecutor, the matter is subject to an administrative investigation to determine if an employee's actions, although not unlawful, violated Agency policy or procedure.

The National Use of Force Review Board (UFRB) reviews all significant UoF incidents, including the use of firearms and UoF resulting in serious injury or death. The local UFRBs review all Less-than-Lethal UoF incidents not addressed by the National UFRB. Only if there is an affirmative determination by the respective board is the case routed for corrective action.

Both the National and local UFRBs are charged with providing three deliverables following their review:

- A decision as to whether or not the application of UoF was consistent with the CBP UoF Policy;
- A decision as to whether or not the incident should be referred for further investigation of potential misconduct or administrative violations; and
- Any observations and or recommendations regarding tactics, training, equipment, operational deficiencies, safety issues, or administrative compliance matters.

National UFRB

The National UFRB is comprised of senior officials from across CBP as well as officials from the DHS OIG, DHS Civil Rights and Civil Liberties, ICE OPR, and the Department of Justice Civil Rights Division.

During FY 2018, three National UFRBs convened reviewing a total of 14 incidents the result of which led to 7 recommendations to tactics, training, and operational issues. Chart 38 shows the breakdown of cases presented to the National UFRB by component.

Chart 38: National UFRB Cases by Component

- USBP ■ OFO
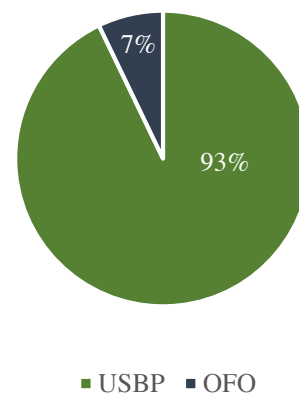
Local UFRB

The local UFRBs conduct an objective review of all Less-than-Lethal UoF incidents not addressed by the National UFRB. The local UFRBs provide CBP senior leadership with an objective assessment of Less-than-Lethal UoF incidents from a regional committee of CBP leadership.

During FY 2018, 42 local UFRBs were held, reviewing a total of 253 Less-than-Lethal UoF incidents and 20 recommendations regarding tactics, training, and operational issues were made. Chart 39 shows the breakdown of cases presented to local UFRBs by component.

Chart 39: Local UFRB Cases by Component
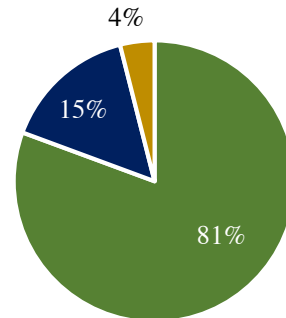
- USBP - OFO - AMO

Cases Processed by Management

All other cases, including the use of physical techniques not resulting in death or serious bodily injury, are referred to component management for review and consideration of disciplinary action.

In FY 2018, CBP closed a total of 184 cases involving alleged inappropriate UoF, regardless of when the UoF occurred.

Chart 40: Types of Decisions
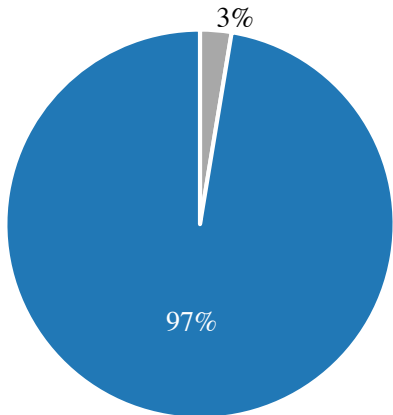
- Disciplinary - Unsubstantiated

Excluding one case where the employee resigned prior to a decision being issued, deciding officials issued decisions on 183 cases involving UoF, 85 percent of which involved USBP employees. In a large percentage of cases involving an allegedly inappropriate UoF, neither the complainant nor CBP could confirm the identity of the person who allegedly used inappropriate force.

Overall, deciding officials sustained disciplinary action in three percent of cases involving UoF. One employee received a suspension and two employees received reprimands. Deciding officials determined that 180 cases of alleged inappropriate UoF did not warrant disciplinary or corrective action.

Chart 40 shows the breakdown of types of disciplinary actions decided across all components.
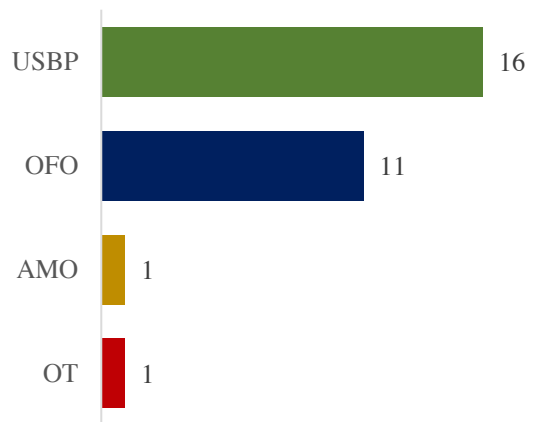
Probationary Period Terminations

The probationary or trial period is the final step in the examination process of a newly-hired employee and is considered a critical assessment period. The probationary period helps to ensure only the best candidates continue with careers in the Federal Government.

Probationary or trial period appointees may be terminated for any deficiency in performance or conduct with minimal procedural requirements. After termination, the former employee has limited avenues to appeal. Therefore, the probationary/trial period is an effective tool for the Agency to review an employee's potential prior to final appointment to a position.

Chart 41: Probationary Terminations

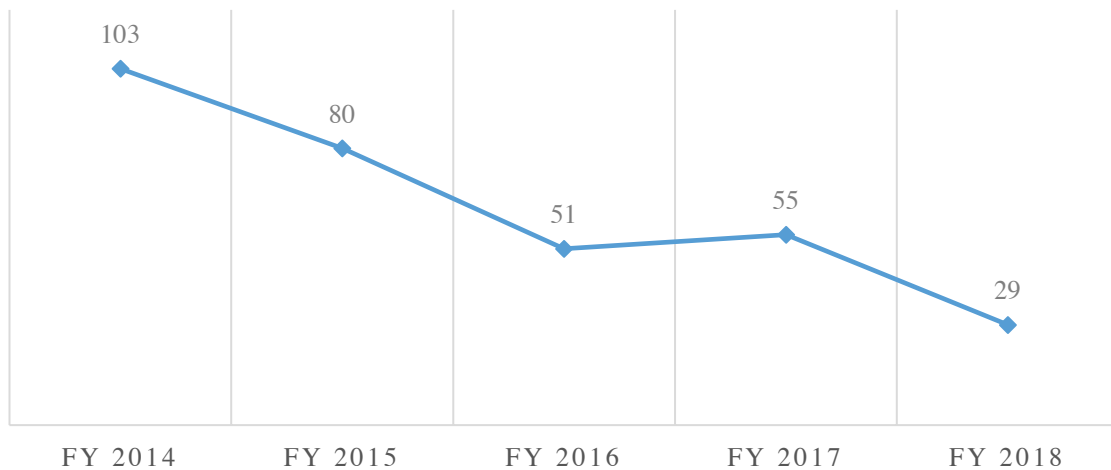| Component	Terminations
USBP	16
OFO	11
AMO	1
OT	1

Agency-wide, CBP processed 29 probationary terminations in FY 2018, which represents approximately 1 percent of the CBP new hires subject to a probationary period. This figure includes all probationary terminations processed by LER and those processed by CBP's training academies.

Chart 41 illustrates the number of probationary terminations by component in FY 2018.

Chart 42 represents the number of Probationary Terminations for the last five fiscal years. Probationary terminations have declined since FY 2014.
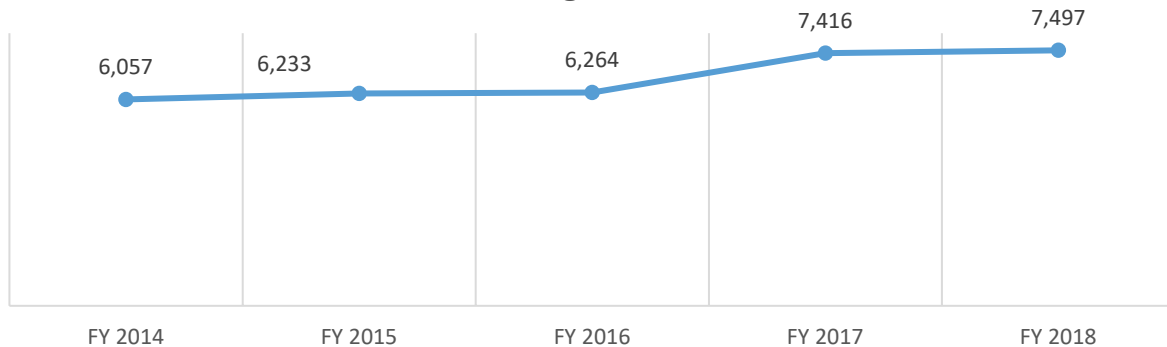
Chart 42 : Probationary Terminations

FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
103	80	51	55	29

Drug Free Workplace

As the guardians of our Nation's borders, CBP is a leader among federal agencies in the interdiction of illegal drugs. The very nature of CBP's mission creates an important connection between an individual's use of illegal drugs and employment with our Agency.

Chart 44: Drug Tests Performed

FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
6,057	6,233	6,264	7,416	7,497

In FY 2018, CBP tested 13 percent of the 56,000 employees in testing designated positions. This equated to performing 7,497 drug tests, only 10 of which were performed due to reasonable suspicion of drug use. These tests resulted in 19 employees testing positive for drug use[5]. This means that less than one-half of 1 percent of drug tests resulted in a positive response. Chart 43 shows that the number of drug tests conducted since FY 2014 has increased. Although the number of tests conducted has increased, the rate of employees testing positive for drugs has consistently remained less than one-half of one percent.

Over the past five years, marijuana has remained the most common drug for which employees test positive. In FY 2018, employees also tested positive for cocaine, opioids, and amphetamines.

Employees who tested positive in FY 2018 included nine CBPOs, six BPAs, one CBP Agriculture Specialist, one Intelligence Research Specialist, one Law Enforcement Communications Assistant, and one Enforcement Analysis Specialist.

In FY 2018, LER closed a total of 14 cases involving positive drug tests, regardless of when the employee tested positive. Excluding the 10 cases where the employee retired or resigned prior to a decision being issued, deciding officials issued decisions on 4 cases involving positive drug tests. Deciding officials mitigated the penalty in three cases resulting in one demotion, one adverse suspension settlement, and one reprimand. A deciding official sustained a removal in one case.

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[5] It is considered a positive result when an employee refuses to undergo a drug test.

Conclusion

Integrity is a core value that guides each and every CBP employee and is reflected in the work the Agency performs every day. The public has placed a great deal of trust in CBP and with that trust comes an expectation that CBP employees will perform their duties with a level of integrity that includes transparency, accountability, and professionalism. CBP employees are guided by these principles, both on and off duty. Those who breach the public trust by engaging in misconduct will continue to be held accountable for their actions.

In addition to efforts to increase transparency through the release of an annual discipline report, CBP will continue to improve the complaints and discipline systems as part of the CBP Integrity and Personal Accountability Strategy. Based upon the recommendations of multiple cross-component work groups, and external studies, CBP has implemented changes to the scope of the cases presented to the DRB in FY 2019 to ensure that discipline corresponds consistently with the severity of the offense. Specifically beginning in FY 2019, the DRB is no longer penalty based; instead, the DRB reviews cases involving serious misconduct that harms the agency's mission in broad ways and cuts across all geographic and component lines. Additional changes to the DRB process include quarterly reporting to senior-level leadership for visibility of certain proposals and decisions made on disciplinary cases as well as quarterly knowledge sharing executive forums for senior-level leadership to discuss decisions made on disciplinary cases during the previous quarter.

For HRM, improving the efficiency and effectiveness of the CBP discipline process remains a top priority. A committed partnership is vital to the success of CBP's discipline process and HRM will continue to work collaboratively with all stakeholders to enhance and expedite the processing of discipline cases as CBP moves forward in FY 2019.

APPENDIX – 1

Office	Number of Employees
Office of the Commissioner	**954**
Office of Public Affairs	78
Immediate Office of the Commissioner	30
Office of Congressional Affairs	22
Office of Professional Responsibility	626
Intergovernmental Public Liaison	31
Joint Field Commands	25
Joint Task Force - West	23
Office of Trade Relations	10
Policy	6
Privacy and Diversity Office	103
Office of Field Operations	**29,684**
U.S. Border Patrol	**21,160**
Enterprise Services	**4,416**
Office of Accountability	76
Immediate Office of the EAC	51
Office of Acquisition	254
Office of Facilities and Asset Management	557
Office of Finance	335
Office of Human Resources Management	661
Office of Information and Technology	1,881
Office of Programming	8
Office of Training and Development	593
Air and Marine Operations	**1,658**
Office of Trade	**942**
Operations Support	**841**
Immediate Office of the EAC	12
Information and Incident Coordination Center	16
Laboratories and Scientific Services Directorate	259
Law Enforcement Officer/Agent Safety and Compliance	80
Office of International Affairs	173
Office of Intelligence	276
Planning, Analysis & Requirements Evaluation Directorate	24
Policy Directorate	1
Office of Chief Counsel	**359**
Total Employees:	**60,014**

APPENDIX - 2

**U. S. Border Patrol DRB Cases**

Case Intake

A total of 130 cases involving 117 USBP employees were presented to DRB panels in FY 2018.[6] This is slightly higher than last year, which had 121 cases on 104 employees. The type of USBP employee most likely to have a case presented to DRB is a non-supervisory GS-12 law enforcement officer with 15 years of federal service. USBP employees with cases presented to DRB represent the average employee with a case presented to DRB.

Supervisory misconduct presented to DRB remained fairly consistent this year with 16 percent of USBP DRB cases involving supervisors. CBP wide, the rate of supervisory misconduct presented to DRB was 15 percent. Last year, 17 percent of USBP DRB cases involved supervisors.

Chart 44: USBP DRB Cases

Sector	Cases
Big Bend	14
Blaine	4
Buffalo	4
Del Rio	10
Detroit	1
El Centro	4
El Paso	28
Grand Forks	1
Havre	1
Houlton	1
Laredo	10
Rio Grande Valley	14
San Diego	11
Spokane	1
Swanton	2
Tucson	20
Yuma	4

Allegations of misconduct involving employees within USBP made up 46 percent of FY 2018 DRB cases. This number has remained fairly consistent over the past three fiscal years. Chart 44 shows the breakdown of which sector each of the USBP employees worked for with a case presented to DRB in FY 2018.

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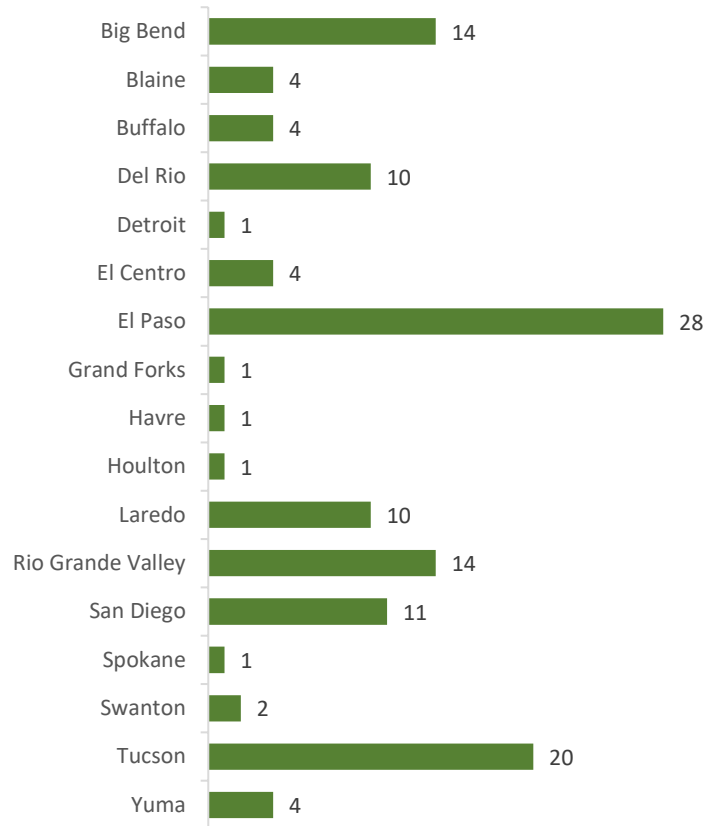
[6] When an employee is the subject of more than one investigative report, the case materials are combined and a single proposal notice is issued.

DRB Proposals/Determinations

DRB issued 118 proposals/determinations to 117 USBP employees who had a case presented to DRB in FY 2018. Most cases, or 74 percent, received a proposed adverse action from DRB. Chart 45 below shows the total number of each type of DRB proposal/determination.

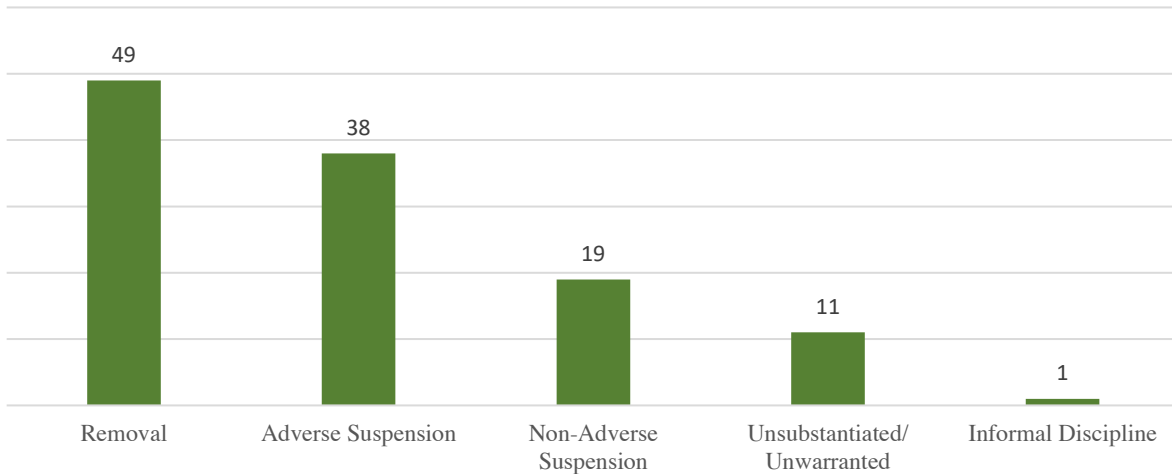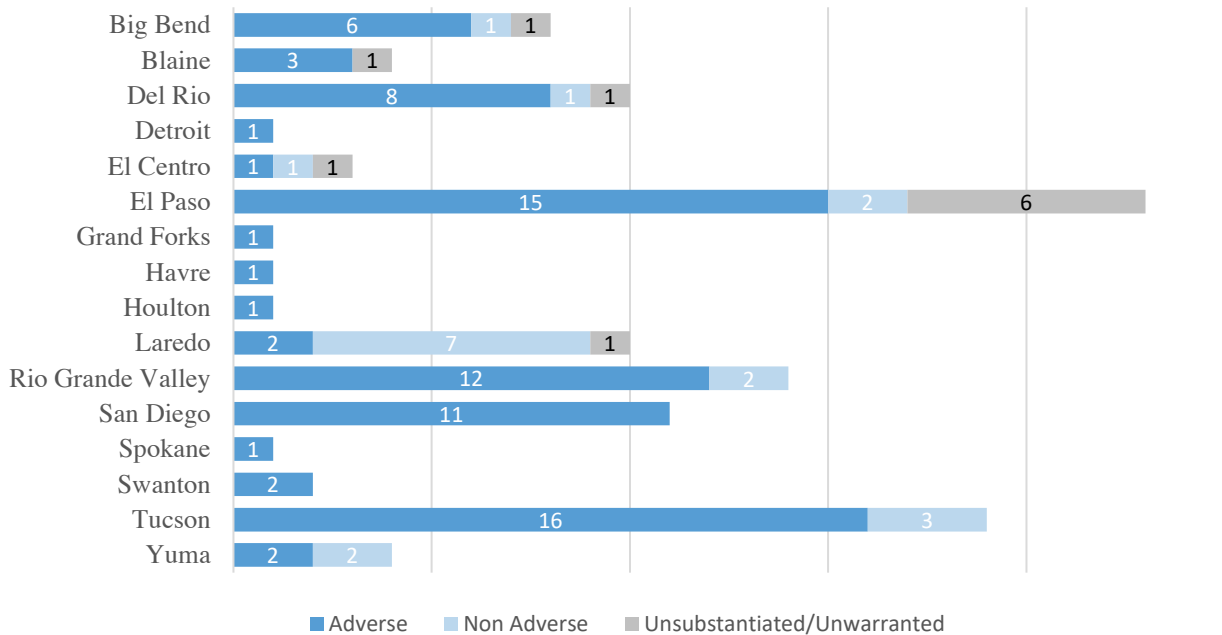Chart 45: DRB Proposals/ Determinations

49	38	19	11	1
Removal	Adverse Suspension	Non-Adverse Suspension	Unsubstantiated/ Unwarranted	Informal Discipline

Chart 46 on the following page shows the type of proposal by adverse or non-adverse action by sector or office. El Paso had the largest number of non-adverse proposals/determinations from DRB with 40 percent of their cases receiving a non-adverse proposal/determination. This was due to El Paso having a number of related cases that were presented to DRB and closed.

Chart 46: Proposal Types

Sector	Adverse	Non Adverse	Unsubstantiated/Unwarranted
Big Bend	6	1	1
Blaine	3		1
Del Rio	8	1	1
Detroit	1		
El Centro	1	1	1
El Paso	15	2	6
Grand Forks	1		
Havre	1		
Houlton	1		
Laredo	2	7	1
Rio Grande Valley	12	2	
San Diego	11		
Spokane	1		
Swanton	2		
Tucson	16	3	
Yuma	2	2	

■ Adverse   ■ Non Adverse   ■ Unsubstantiated/Unwarranted

The most common misconduct DRB issued proposals for USBP employees in FY 2018 were:

1. **Dishonesty**
   a. Dishonesty was the most common type of misconduct DRB reviewed for USBP employees, with 27 percent of USBP cases receiving a proposal related to dishonesty.
   b. Ninety three percent of cases where DRB found that an employee engaged in dishonesty resulted in a proposed adverse action.
      i. DRB proposed a non-adverse suspension in two cases. In these cases, the charge did not include the element of the employee knowingly providing false information.
   c. Chart 47 shows the breakdown of dishonesty cases by sector.

Chart 47: Dishonesty

Sector	Count
Big Bend	4
Blaine	1
Buffalo	1
Del Rio	2
El Paso	4
Laredo	2
Rio Grande Valley	6
San Diego	3
Tucson	9
Yuma	1

d. Real Case – BPA received a proposed removal when he took a rowing machine home and made false statements when confronted about the matter.

2. **DUI**

a. Eighty percent of cases where DRB found that an employee drove a vehicle while under the influence resulted in a proposed adverse action. Forty six percent of the proposals were for an adverse suspension, while 26 percent were a proposed removal.

b. Chart 48 shows the breakdown of DUI cases by sector.

c. Real Case – BPA received a proposed 45 day suspension when he was arrested for DUI on two separate occasions within the same week. He was AWOL for two days as a result, and also lost his duty belt, firearm, pistol magazines, radio, baton, and handcuffs.
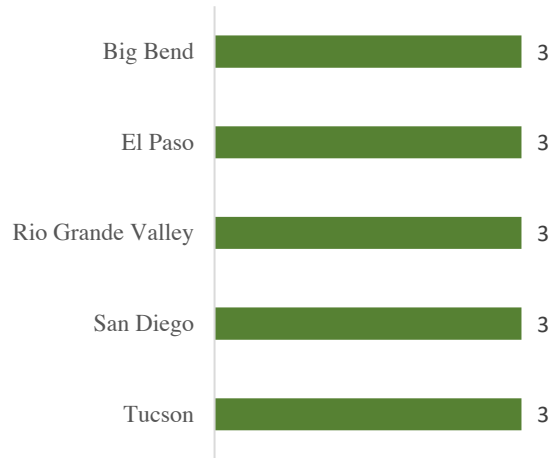
Chart 48: DUI

Sector	Value
Big Bend	3
El Paso	3
Rio Grande Valley	3
San Diego	3
Tucson	3

3. **Misuse of a GOV**

a. One Hundred percent of cases where DRB found an employee misused a GOV resulted in a proposed adverse action. Seventy seven percent of cases were an adverse suspension, with 23 percent were a proposed removal.

b. Chart 49 shows the breakdown of GOV cases by sector.

c. Real Case – BPA received a proposed 20 day suspension after he drove a marked service vehicle to attend a family matter.

Chart 49: GOV Misuse

Sector	Value
El Centro	1
El Paso	7
Havre	1
San Diego	2
Swanton	1
Tucson	2
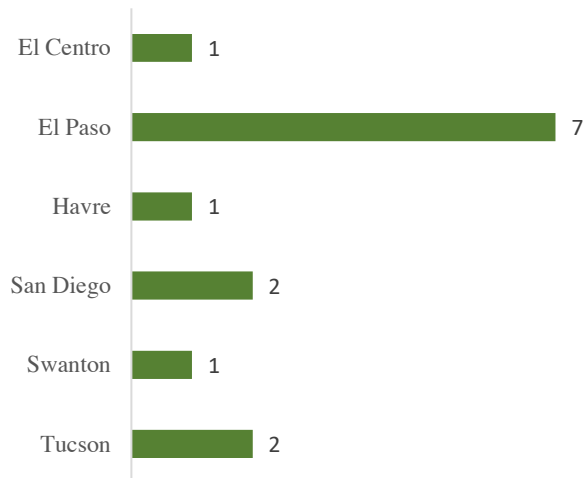
In the DUI and dishonesty categories, there were five cases where DRB proposed a non-adverse action contrary to the expectations of LER Intake.

Decisions on DRB Proposals

In FY 2018, LER closed a total of 133 USBP DRB cases, regardless of when DRB panel was convened or in what fiscal year the proposal was served. For example, a case presented in FY 2016 could potentially have a decision issued in FY 2017. The traversing of fiscal years is attributable to several factors, which include due process requirements, requests for extensions, and other case-related issues.

Deciding officials issued decisions on 89 USBP DRB proposals in FY18. Chart 50 shows the number of decisions issued by sector.

USBP deciding officials sustained an adverse action in 69 percent[7] of decisions on DRB proposals. This number is close to the CBP-wide rate of 79 percent of decisions on

Chart 50: Decisions

Sector	Decisions
Big Bend	4
Blaine	3
Buffalo	2
Del Rio	10
El Centro	4
El Paso	20
Grand Forks	1
Havre	1
Houlton	1
Laredo	9
Rio Grande Valley	9
San Diego	6
Spokane	1
Swanton	1
Tucson	14
Yuma	3
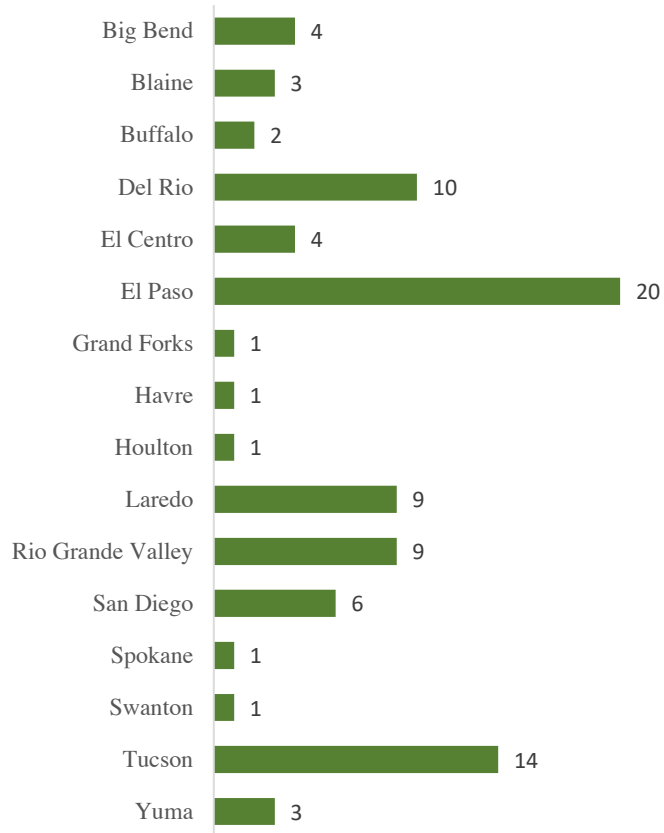
Chart 51: Types of Decisions

48%
29%
23%
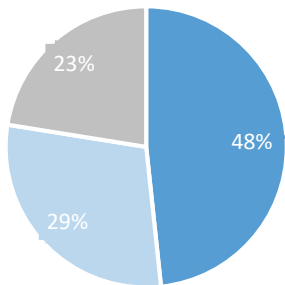
■ Adverse total ■ Non adverse ■ Unsubstatiated

DRB proposals being for an adverse action. Due to the consideration of mitigating Douglas factors, along with additional information provided during the reply period, it is not surprising that such a large number of proposed adverse actions are mitigated. Chart 51 shows the breakdown of types of disciplinary actions decided across all sectors.

[7] This number includes eight cases where the deciding official sustained an adverse action but implemented a non-adverse action due to the employee entering into a settlement agreement.

Chart 52 shows the type of decision by sector. El Paso had the largest percentage of non-adverse decisions, with 54 percent of their DRB cases closed by deciding officials as unsubstantiated or warranting non-adverse action.

Chart 52: Decisions by Sector

USBP deciding officials determined that three DRB proposals did not warrant disciplinary action. The proposals in these cases involved the following types of misconduct:

- Inappropriate Association
- Unprofessional Conduct

USBP deciding officials entered into settlement agreements in 17 percent of DRB cases. This number is lower than the CBP-wide rate of 16 percent of DRB cases ending in settlement agreements. One benefit of settlement agreements is that the employee waives their right to appeal the matter as part of the agreement. Nine percent of settled cases resulted in the deciding official determining that an adverse action was warranted, but allowing the employee to serve a lessoned suspension due to entering into a settlement agreement.

USBP deciding officials entered into settlement agreements in 17 percent of DRB cases. This number is higher than the CBP-wide rate of 16 percent of DRB cases ending in settlement agreements. One benefit of settlement agreements is that the employee waives their right to appeal the matter as part of the agreement. Nine percent of settled cases resulted in the deciding official determining that an adverse action was warranted, but allowing the employee to serve a lessoned suspension due to entering into a settlement agreement.

Rates of mitigation on common misconduct DRB issued proposals for:

1. **Dishonesty**
   a. USBP deciding officials sustained DRB's proposal outright in 46 percent of dishonesty cases.
      i. This rate was higher than OFO's rate of 15 percent.
   b. Overall, 66 percent of USBP cases where DRB found dishonesty resulted in a decision to implement adverse action.
      i. This rate was higher than OFO's rate of 62 percent.
      ii. This rate was higher than the CBP-wide rate of 58 percent of dishonesty cases receiving a decision to implement adverse action.
   c. USBP deciding officials entered into LCAs in seven percent of dishonesty cases.
      i. This rate was lower than OFO's rate of 19 percent.
   d. USBP deciding officials determined the misconduct was unsubstantiated in two dishonesty cases.
      i. Big Bend Sector and Tucson represented the unsubstantiated dishonesty decisions.
   e. Dishonesty was also one the most common types of misconduct DRB issued proposals for OFO.

2. **Driving Under the Influence**

   f. USBP deciding officials sustained DRB's proposal outright in just two cases that involved a DUI.
      i. OFO deciding officials also sustained DRB's proposal in three cases that involved a DUI.
   g. Overall, 40 percent of USBP cases that involved a DUI resulted in a decision to implement adverse action.
      i. This rate was substantially lower than OFO's rate of 92 percent.
      ii. This rate was lower than the CBP-wide rate of 68 percent of DUI cases receiving a decision to implement adverse action.
   h. No USBP deciding officials determined the misconduct was unsubstantiated in a DUI case.
   i. DUI was also one of the most common misconduct types that the DRB issued proposals for within OFO.

3. **Misuse of a GOV**

   j. USBP deciding officials sustained DRB's proposal outright in 22 percent of misuse of a GOV cases.

    k. Overall, 55 percent of USBP cases that involved misuse of a GOV resulted in a decision to implement adverse action.

    l. No USBP deciding officials entered into a LCA in a misuse of a GOV case.

    m. One USBP deciding official determined the misconduct deserved a counseling memo in misuse of a GOV case.

Timeliness

In FY 2015, HRM implemented several process improvements and worked collaboratively with stakeholders to refine the discipline process in an effort to improve timeliness of actions. HRM developed a case processing goal of 170 days for DRB cases. As of September 30, 2018, the average case processing time for USBP DRB cases that closed during FY 2018 was 131 days. This number is lower than the average of 151 days in which all FY 2018 DRB cases closed.

Considering all of the sectors that closed five or more DRB cases during FY 2018, El Paso and Tucson Sectors had the greatest number of cases closed in more than 170 days, with 20 percent of El Paso cases closing in more than 170 days and 29 percent of Tucson cases closing in more than 170 days. El Paso Sector closed the most cases of any other sector in FY 2018.

APPENDIX – 3

OFO DRB Cases

Case Intake

A total of 122 allegations of misconduct involving 107 OFO employees were presented to DRB panels in FY 2018.[8] The type of OFO employee most likely to have a case presented to DRB is a non-supervisory GS-12 law enforcement officer with 18 years of federal service. OFO employees with cases presented to DRB had slightly more experience than the average employee with a case presented to DRB, who had 15 years of federal service.

Supervisory misconduct presented to DRB this year accounted for 12 percent of OFO DRB cases. That is an increase from FY2017, in which only 7 percent of OFO cases involved supervisors. CBP wide, the rate of supervisory misconduct presented to DRB was 15 percent, the same as the previous year.

Allegations of misconduct involving employees within OFO made up 43 percent of FY 2018 DRB cases. This number has remained fairly consistent over the past four fiscal years. Chart 54 shows the breakdown of which field office each of the 107 OFO employees with a case presented to the DRB in FY 2018 worked for.

Chart 54: DRB Cases

Field Office	Cases
Agriculture	1
Atlanta	3
Baltimore	2
Boston	9
Buffalo	7
Cargo	1
Chicago	4
Detroit	6
El Paso	6
Houston	9
Laredo	12
Los Angeles	5
Miami	5
Nat'l Targeting	1
New York	5
Planning	1
Preclearance	1
San Diego	10
San Francisco	7
Seattle	5
Tampa	2
Tucson	5

DRB Proposals/Determinations

DRB issued proposals to 94 of the 107 OFO employees who had a case presented to DRB in FY 2018. Most cases, or 89 percent, received a proposed adverse action from DRB. Chart 55 on the following page shows the total number of each type of DRB proposal/determination.

[8] When an employee is the subject of more than one investigative report, the case materials are combined and a single proposal notice is issued.

Chart 55: DRB Proposals/Determinations

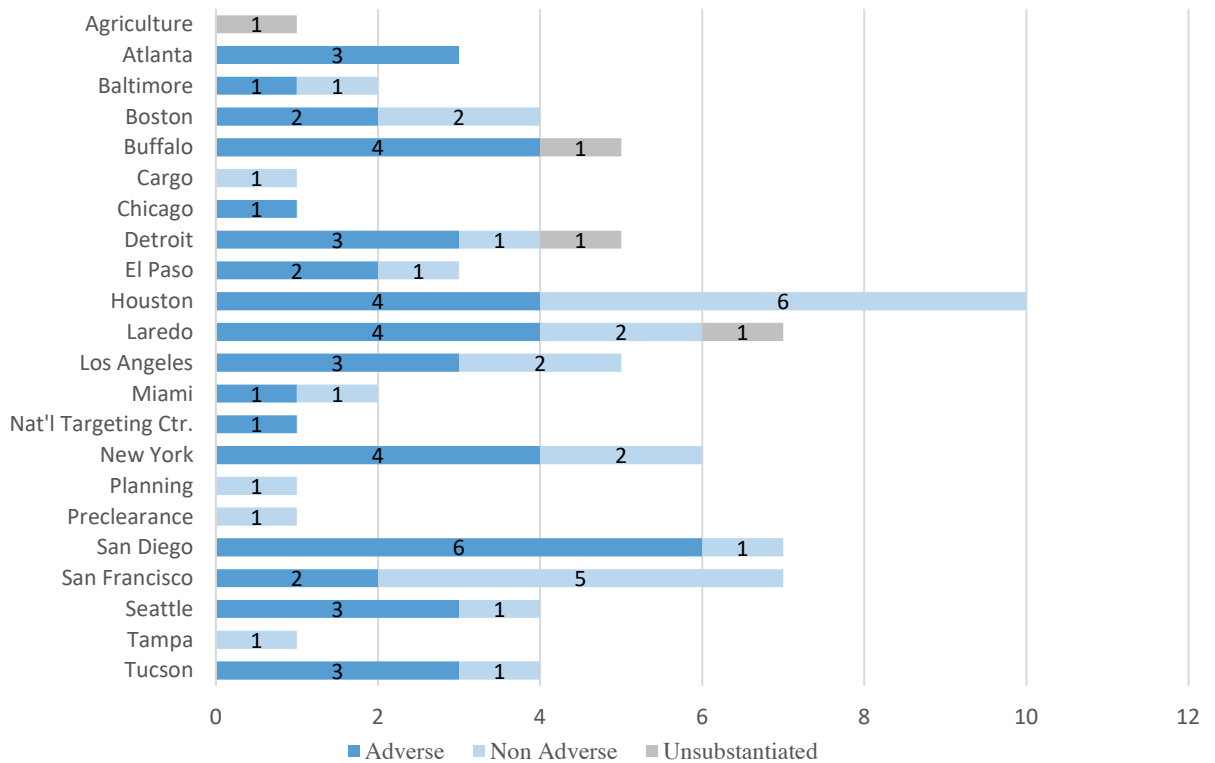|	
Removal	52
Adverse Suspension	32
Non-adverse Suspension	8
Reprimand	1
Counseling	1

Chart 56 shows the type of proposal by adverse or non-adverse action by field office. El Paso and Houston tied for the largest number of non-adverse proposals from DRB with two each. In El Paso, that constituted 50 percent of their DRB cases receiving a non-adverse proposal whereas it constituted only 18 percent of the DRB cases from Houston.

Chart 56: Proposal Types

The most common misconduct DRB issued proposals for OFO employees in FY 2018 were:

1. **Dishonesty**
   a. Dishonesty was the most common type of misconduct DRB reviewed for OFO employees, with 27 percent of cases receiving a proposal related to dishonesty.
   b. 100 percent of cases where DRB found that an employee engaged in dishonesty resulted in a proposed adverse action. All of the proposals were for removal.
   c. Chart 57 shows the breakdown of dishonesty cases by field office.
   d. Real Case – DRB proposed the removal of a CBPO who married under false pretenses in order to circumvent immigration.

Chart 57: Dishonesty
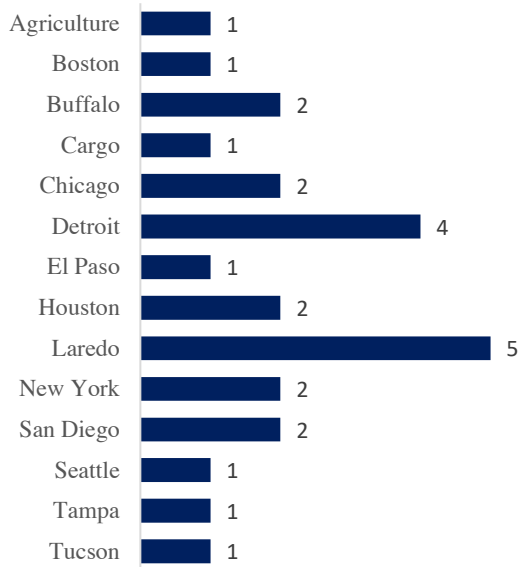
Field Office	Count
Agriculture	1
Boston	1
Buffalo	2
Cargo	1
Chicago	2
Detroit	4
El Paso	1
Houston	2
Laredo	5
New York	2
San Diego	2
Seattle	1
Tampa	1
Tucson	1

2. **Failure to Follow Policy**
   a. Seventy-seven percent of cases where DRB found that an employee failed to follow policy resulted in a proposed adverse action.
   b. Chart 58 shows the breakdown of failure to follow policy cases by field office.
   c. Real Case – DRB proposed the removal of a MSS who was arrested for shoplifting and failed to report the arrest.

Chart 58: Failure to Follow Policy

Field Office	Count
Buffalo	2
Chicago	2
Detroit	1
El Paso	2
Houston	1
Laredo	5
Los Angeles	1
Miami	1
San Diego	1
Tucson	2

3. **DUI**
   a. Ninety-three percent of cases where DRB found an employee drove a vehicle while under the influence resulted in a proposed adverse action. Roughly half of the proposals were for removal and the other half were for suspensions.

b. Chart 59 shows the breakdown of DUI cases by field office.
c. Real Case – DRB proposed the removal of a CBPO who was charged with Felony DUI after crashing into another vehicle while driving the wrong way on the interstate.
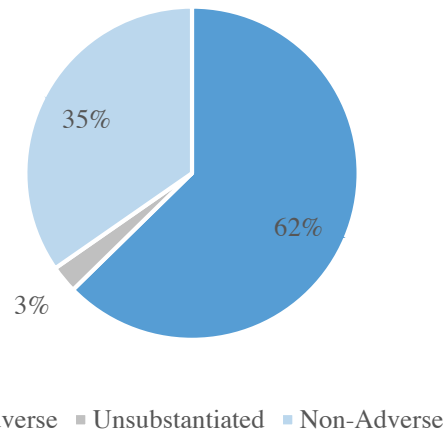
Chart 59: DUI

Field Office	Count
Atlanta	1
Boston	3
Buffalo	1
Chicago	1
Detroit	1
Houston	3
New York	2
San Diego	1
Seattle	2

In the one case in which the DRB did not propose adverse action, it was presented to DRB because the CBPO was charged with one Charge of Conduct Unbecoming for his DUI. He was also charged with Failure to Follow Leave and Attendance Policy for two instances of being tardy to work and not calling in beforehand. He also had a prior 1 day suspension for AWOL. So, the prior discipline plus the misconduct in addition to the DUI would typically have called for a proposal of adverse action.

Decisions on DRB Proposals

In FY 2018, LER closed a total of 98 OFO DRB cases, regardless of when DRB panel was convened or in what fiscal year the proposal was served. For example, a case presented in FY 2017 could potentially have a decision issued in FY 2018. The traversing of fiscal years is attributable to several factors, which include due process requirements, requests for extensions, and other case related issues.

Excluding twelve cases in which the employee resigned or retired and the one case in which the DRB issued a counseling, deciding officials issued decisions on 73 OFO DRB proposals. Chart 60 shows the type of decisions issued.

Chart 60: Types of Decision

Adverse 62% · Unsubstantiated 3% · Non-Adverse 35%

■ Adverse ■ Unsubstantiated ■ Non-Adverse

OFO deciding officials sustained an adverse action in 62 percent of decisions on DRB proposals. This number is slightly below the CBP-wide rate of 70 percent of decisions on DRB proposals being for an adverse action. Due to the consideration of mitigating Douglas factors, along with additional information provided during the reply period, it is not surprising that such a large number of proposed adverse actions are mitigated.

Chart 61 shows the type of decision by field office. Houston and San Francisco had the largest number of non-adverse decisions with six and five cases respectively. This is not surprising, as those two offices also had the largest number of non-adverse proposals from DRB.

Chart 61: Decision types

Field Office	Adverse	Non Adverse	Unsubstantiated
Tucson	3	1	
Tampa		1	
Seattle	3	1	
San Francisco	2	5	
San Diego	6	1	1
Preclearance		1	
PPAE		1	
New York	4	2	
NTC	1		
Miami	1	1	
Los Angeles	3	2	
Laredo	4	2	1
Houston	4	6	
El Paso	2	1	
Detroit	3	1	1
Chicago	1		
Cargo & Conveyance Sec	1		
Buffalo	4		1
Boston	2	2	
Baltimore	1	1	
Atlanta	3		
Agriculture Programs & Trade…			1

OFO deciding officials determined that four DRB proposals did not warrant disciplinary action. The proposals in these four cases involved Lack of Candor and/or Failure to Follow Policy.

OFO deciding officials entered into settlement agreements in 35 percent of DRB cases. This number is higher than the CBP-wide rate of 16 percent of DRB cases ending in settlement agreements. One benefit of settlement agreements is that the employee waives their right to appeal the matter as part of the agreement. Thirty-one percent of settled cases resulted in the deciding official determining that an adverse action was warranted, but allowing the employee to serve a non-adverse suspension due to entering into a settlement agreement.

Rates of mitigation on common misconduct DRB issued proposals for:
1. **Dishonesty**
   a. OFO deciding officials sustained DRB's proposal outright in 15 percent of dishonesty cases.

        i. This rate was roughly half of USBP's rate of 33 percent.
- b. Overall, 62 percent of OFO cases where DRB found dishonesty resulted in a decision to implement adverse action.
  - i. This rate was very close to USBP's rate of 66 percent.
  - ii. This rate was higher than the CBP-wide rate of 58 percent of dishonesty cases receiving a decision to implement adverse action.
- c. OFO deciding officials entered into LCAs in 19 percent of dishonesty cases.
  - i. This rate was higher than USBP's rate of six percent.
- d. The OFO deciding official determined in two cases that the misconduct was unsubstantiated in a dishonesty case.
- e. Dishonesty was also the most common type of misconduct DRB issued proposals for USBP.

2. Failure to Follow Policy
- a. OFO deciding officials sustained DRB's proposal outright in 10 percent of failure to follow policy cases.
- b. Overall, 71 percent of OFO cases where DRB found that an employee failed to follow policy resulted in a decision to implement adverse action.
  - i. This rate was close to the CBP-wide rate of 75 percent of failure to follow policy cases receiving a decision to implement adverse action.
- c. The OFO deciding official entered into a LCA in three failure to follow policy cases.
- d. One OFO deciding official determined the misconduct was unsubstantiated in a failure to follow policy case.

3. DUI
- a. OFO deciding officials sustained DRB's proposal outright in three cases that involved a DUI.
  - i. USBP deciding officials also sustained DRB's proposal in just three cases that involved a DUI.
- b. Overall, 91 percent of OFO cases that involved a DUI resulted in a decision to implement adverse action.
  - i. This rate was higher than USBP's rate of 40 percent.
  - ii. This rate was higher than the CBP-wide rate of 68 percent of DUI cases receiving a decision to implement adverse action.
- c. No OFO deciding official determined the misconduct was unsubstantiated in a DUI case.
- d. DUI was the second most common misconduct DRB issued proposals for USBP.

Timeliness

In FY 2015, HRM implemented several process improvements and worked collaboratively with stakeholders to refine the discipline process in an effort to improve timeliness of actions. HRM developed a case processing goal of 170 days for DRB cases for FY 2018. As of September 30, 2018, the average case processing time for FY 2018 OFO DRB cases was 174 days. Although this number is slightly higher than the case processing goal HRM established, it is significantly

longer than the average of 151 days that all DRB cases closed in FY 2018. The statistics were significantly impacted by several cases that took more than a year from the DRB date to complete. All three involved companion and/or additional cases. Two of the three cases needed to be re-presented to the DRB for reconsideration of identified misconduct.

Out of the field offices that closed five or more DRB cases during FY 2018, Houston, Los Angeles, and San Francisco had the majority of their DRB cases take more than 170 days. Houston had 7 out of 12, or 58 percent take longer than 170 days. Los Angeles had 3 out of 5, or 60 percent take longer than 170 days. San Francisco had 4 out of 7 or 57 percent take longer than 170 days. The New York Field Office closed the most cases of any other field office in FY 2018, with 14 cases and only one of its cases closed in more than 170 days. This is a significant reversal from the previous year, when 71 percent of their DRB cases took longer than 180 days to complete.

APPENDIX – 4

Air and Marine Operations DRB Cases

Case Intake

A total of four allegations of misconduct involving four AMO employees were presented to DRB panels in FY 2018. The type of AMO employee most likely to have a case presented to DRB is a non-supervisory GS-13 law enforcement officer with 19 years of federal service. AMO employees with cases presented to DRB tend to have slightly more federal service than the average of 10 years.

Chart 62: By Organization

Southeast Region — 2

National Air Security Operations — 1

Air and Marine Operartions Center — 1

Supervisors made up 25 percent of AMO cases presented to DRB. CBP-wide, the rate of supervisory misconduct presented to DRB was 15 percent.

Allegations of misconduct involving employees within AMO made up one percent of FY 2018 DRB cases compared to three percent in FY 2017. Chart 62 shows the breakdown of which organization within AMO each of the four employees with a case presented to DRB in FY 2018 worked.

DRB Proposals/Determinations

Chart 63: DRB Proposals

Adverse Suspension — 2

Removal — 2

DRB issued four determinations to the four AMO employees who had a case presented to DRB in FY 2018. All of the AMO cases received a proposed adverse action from DRB. Chart 63 shows the total number of each type of DRB proposal/determination.

Chart 64 on the following page shows the number of adverse actions proposed by organization within AMO.

Chart 64: Adverse Proposals by Organization

The most common misconduct DRB issued proposals for AMO employees in FY 2018 was Driving Under the Influence.

Decisions on DRB Proposals
Excluding one case where the employee resigned prior to a decision being issued, deciding officials issued decisions on three AMO DRB cases, regardless of when DRB panel was convened or in what fiscal year the proposal was served. For example, a case presented in FY 2017 could potentially have a decision issued in FY 2018. The traversing of fiscal years is attributable to several factors, which include due process requirements, requests for extensions, and other case related issues.

Chart 65: Types of Decisions

AMO deciding officials sustained an adverse action in 67 percent of decisions on DRB proposals. This numbers is greater than the CBP-wide rate of 31 percent of decisions on DRB proposals being for an adverse action. Due to the consideration of mitigating Douglas factors, along with additional information provided during the reply period, it is not surprising that proposed adverse actions are sometimes mitigated. Chart 65 shows the breakdown of types of disciplinary actions decided across all organizations within AMO.

Chart 66 shows the type of decision by organization within AMO.

Chart 66: Decision Types

Timeliness

AMO deciding officials closed DRB cases in an average of 100 days, compared to an average of 174 days in FY 2017. This is substantially lower than the overall average of 151 days for all DRB cases closed in FY 2018.

APPENDIX – 5

Enterprise Services DRB Cases

Case Intake

A total of 15 allegations of misconduct involving 13 ES employees were presented to DRB panels in FY 2018.[9] The type of ES employee most likely to have a case presented to DRB is a non-supervisory GS-12 with 14 years of federal service. ES employees with cases presented to DRB tend to have slightly more federal service than the average of 10 years.

Supervisors made up seven percent of ES cases presented to DRB. CBP-wide, the rate of supervisory misconduct presented to DRB was 15 percent.

Allegations of misconduct involving employees within ES made up five percent of FY 2018 DRB cases, an increase from the two percent in FY 2017. Chart 67 shows the breakdown for which organization within ES each of the 13 employees with a case presented to DRB in FY 2018 worked.

Chart 67: By Organization

Organization	Count
HRM	1
OFAM	2
OIT	10

DRB Proposals/Determinations

Chart 68: DRB Proposals/Determinations

Type	Count
Removal	8
Adverse Suspension	3
Reprimand	1

Excluding one case that was placed on hold, DRB issued 12 determinations to 12 ES employees who had a case presented to DRB in FY 2018. Most cases, or 75 percent, received a proposed adverse action from DRB. Chart 68 shows the total number of each type of DRB proposal/determination.

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[9] When an employee is the subject of more than one investigative report, the case materials are combined and a single proposal notice is issued.
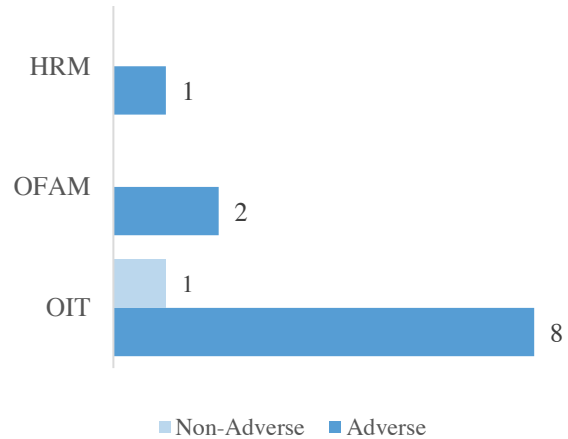
Chart 69 shows the type of proposal by adverse or non-adverse action by organization within ES.

The proposed adverse actions from ES involved different types of misconduct, but the most common was Absence Without Leave. In no particular order, the following represents some of the other misconduct that ES employees were charged with:

- Lack of Candor
- Neglect of Duty
- Inappropriate Association

A review of the non-adverse DRB proposal was conducted and it was found that local management felt the case warranted adverse action contrary to the expectations of Labor and Employee Relations (LER) Intake.

Decisions on DRB Proposals

Excluding three cases where the employee retired or resigned prior to a decision being issued, deciding officials issued decisions on nine ES DRB cases, regardless of when DRB panel was convened or in what fiscal year the proposal was served. For example, a case presented in FY 2017 could potentially have a decision issued in FY 2018. The traversing of fiscal years is attributable to several factors, which include due process requirements, requests for extensions, and other case related issues. Chart 70 shows which organizations within ES issued decisions in FY 2018.

Chart 69: Type of Proposal

HRM — 1
OFAM — 2
OIT — 1 (Non-Adverse), 8 (Adverse)

■ Non-Adverse   ■ Adverse

Chart 70: Decisions

OFAM — 4
OIT — 4
HRM — 1

ES deciding officials sustained an adverse action in 67 percent of decisions on DRB proposals. This numbers is greater than the CBP-wide rate of 31 percent of decisions on DRB proposals being for an adverse action. Due to the consideration of mitigating Douglas factors, along with additional information provided during the reply period, it is not surprising that proposed adverse actions are sometimes mitigated. Chart 71 shows the breakdown of types of disciplinary actions decided across all organizations within ES.

Chart 72 shows the type of decision by organization within ES. ES deciding officials entered into settlement agreements in 17 percent of DRB cases. This number is the same as the CBP-wide rate of 17 percent of DRB cases ending in settlement agreements. One benefit of settlement agreements is that the employee waives their right to appeal the matter as part of the agreement.

Chart 71: Types of Decisions

- Adverse   - Non Adverse

Chart 72: Decision Types

Organization	Value
HRM	1
OIT	3
OIT	1
OFAM	4

- Non-Adverse   - Adverse

Rate of mitigation on common misconduct DRB issued proposals for:

1. **AWOL**
   a. ES deciding officials sustained DRB's proposal in 100 percent of the AWOL cases, although these cases also involved other charges.
   b. Overall, 100 percent of ES cases where DRB found AWOL resulted in a decision to implement adverse action.
      i. This rate is in line with the CBP-wide rate of 100 percent of AWOL cases receiving a decision to implement adverse action. These cases also involved other charges.

Timeliness

ES deciding officials closed DRB cases in an average of 159 days, compared to an average of 105 days in FY 2017. This is slightly higher than the overall average of 151 days for all DRB cases closed in FY 2018.

APPENDIX – 6

Office of the Commissioner DRB Cases

Case Intake

A total of two allegations of misconduct involving two Office of the Commissioner (OC) employees were presented to DRB panels in FY 2018. The type of OC employee most likely to have a case presented to the DRB is a GS-13 non-supervisor with 9 years of federal service. OC employees with cases presented to the DRB tend to be less experienced than the average employee with a case presented to the DRB, who is a non-supervisory GS-12 law enforcement officer with 10 years of federal service.

There were no supervisory cases presented to the DRB in FY 2018. CBP-wide, the rate of supervisory misconduct presented to DRB in FY 2018 was 15 percent.

Allegations of misconduct involving employees within OC made up less than one percent of FY 2018 DRB cases compared to two percent in FY 2017. Chart 74 shows for which organization within OC each of the two employees with a case presented to DRB in FY 2018 worked.
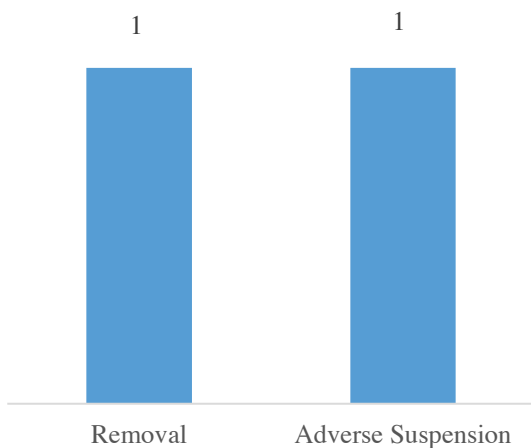
Chart 74: By Organization

Congressional Affairs   1

Policy   1

Chart 75: DRB Proposals

1   1

Removal   Adverse Suspension

DRB Proposals/Determinations

DRB issued two determinations to the two OC employees who had a case presented to DRB in FY 2018. Both cases received a proposed adverse action from DRB. Chart 75 shows the total number of DRB proposal/determination.
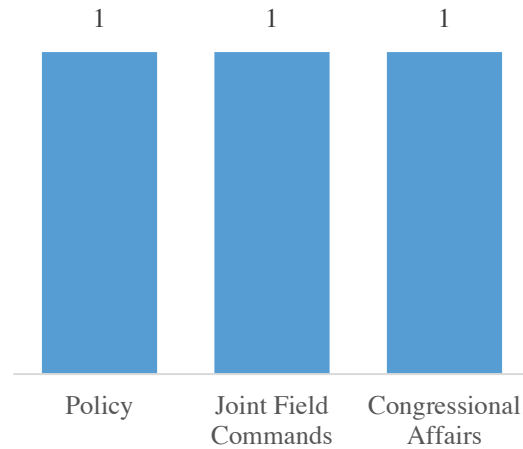
The most common misconduct DRB issued proposals for OC employees in FY 2018 was AWOL. One of the cases included lack of candor and failure to follow leave procedures.

Decisions on DRB Proposals

In FY 2018, deciding officials issued decisions on three OC DRB cases, regardless of when DRB panel was convened or in what fiscal year the proposal was served. For example, a case presented in FY 2017 could potentially have a decision issued in FY 2018. The traversing of fiscal years is attributable to several factors, which include due process requirements, requests for extensions, and other case related issues. Chart 76 shows which organizations within OC issued decisions in FY 2018.

Chart 76: Decisions

| | 1 | 1 | 1 |
| Policy | Joint Field Commands | Congressional Affairs |

OC deciding officials entered into settlement agreements in 67 percent of the DRB cases. The number of settlements is higher than the CBP-wide rate of 16 percent of DRB cases ending in settlement agreements. One benefit of settlement agreements is that the employee waives their right to appeal the matter as part of the agreement. The cases settled resulted in the deciding officials determining that a non-adverse action was warranted.

Due to the low number of DRB cases on OC employees, it is not possible to determine a rate of mitigation on common misconduct for which DRB issued proposals.

Timeliness

In FY 2018 OC deciding officials closed DRB cases in an average of 197 days compared to 155 days in FY 2017. This is higher than the overall average of 151 days for all DRB cases closed in FY 2018.

APPENDIX – 7

Operations Support DRB Cases

Case Intake

A total of two allegations of misconduct involving two OS employees were presented to DRB panels in FY 2018. The type of OS employee most likely to have a case presented to the DRB is a GS-14 non-supervisor with 26 years of federal service. OS employees with cases presented to the DRB tend to be more experienced than the average employee with a case presented to the DRB, who is a non-supervisory GS-12 law enforcement officer with 10 years of federal service.

Allegations of misconduct involving employees within OS made up less than one percent of FY 2018 DRB cases compared to two percent in FY 2017. Chart 78 shows for which organization within OS each of the two employees with a case presented to DRB in FY 2018 worked.

Chart 78: By Organization

Intel — 1

Int'l Affairs — 1
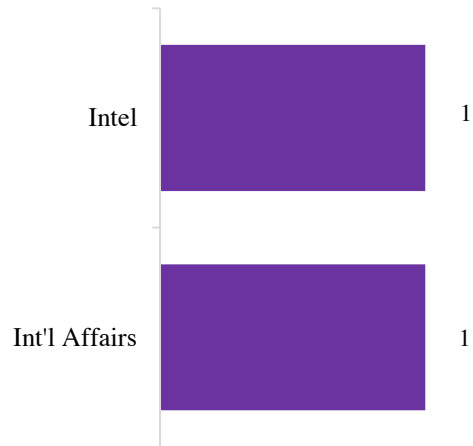
DRB Proposals/Determinations

Chart 79: DRB Proposals

Removal — 1

Adverse Suspension — 1

DRB issued two determinations to the two OS employees who had a case presented to DRB in FY 2018. All of the cases received a proposed adverse action from DRB. Chart 79 shows the total number of each type of DRB proposal/determination.

The two proposed adverse actions from OS involved off-duty arrests. In no particular order, OS employees were charged with the following types of misconduct:
- Driving under the Influence of Alcohol;
- Misuse of Position; and
- Failure to Report Outside Employment.

Decisions on DRB Proposals

In FY 2018, LER closed a total of three OS DRB cases, regardless of when DRB panel was convened or in what fiscal year the proposal was served. For example, a case presented in FY 2017 could potentially have a decision issued in FY 2018. The traversing of fiscal years is attributable to several factors, which include due process requirements, requests for extensions, and other case related issues.

Excluding one case where the employee retired prior to a decision being issued, deciding officials issued decisions on two OS DRB proposals. Chart 81 shows which organizations within OS issued decisions in FY 2018.

OS deciding officials sustained an adverse action in 50 percent of decisions on DRB proposals. This number is higher than the CBP-wide rate of 31 percent of decisions on DRB proposals being for an adverse action. This is likely because OS only issued decisions on two cases.
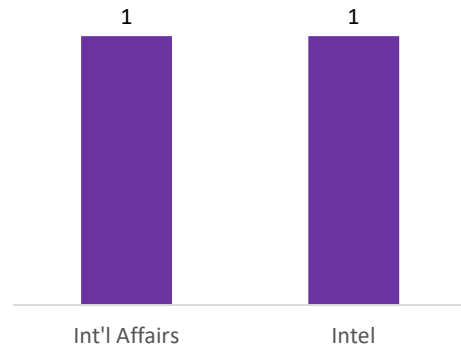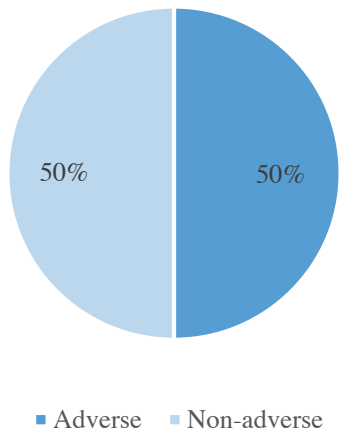
Chart 81: Decisions

Chart 82 shows the breakdown of types of disciplinary actions decided across all organizations within OS.

Chart 82: Types of Decisions

■ Adverse   ■ Non-adverse

Due to the low number of DRB cases on OS employees, it is not possible to determine a rate of mitigation on common misconduct for which DRB issued proposals.

Timeliness

In FY 2018 OS deciding officials closed DRB cases in an average of 154 days compared to 149 days in FY 2017. This is in line with the overall average of 151 days for all DRB cases closed in FY 2018.