**Nexus**

**Overview**

The term "nexus" refers to the connection that must exist between conduct or behavior forming the basis for an adverse action and the discernible or foreseeable negative impact the conduct or behavior has on an agency's operations. Nexus comes into play twice in most adverse actions. First, establishing nexus is necessary to prove that the action promotes the efficiency of the service. Second, nexus is often a factor in determining the appropriate penalty for the conduct or behavior.

Sometimes nexus is relatively easy to demonstrate or prove. For example, with offenses such as insubordination or failure to show up for work, the connection between the offense and the adverse impact on the efficiency of the service is clear. But that isn't always the case. When the misconduct occurs off duty and away from work, the nexus is less obvious. However, some off-duty misconduct can be so egregious that the nexus "speaks for itself."

 **Key Points**

These key-point summaries cannot reflect every fact or point of law contained within a source document. For the full text, follow the link to the cited source. The references to ***Broida*** in this Quick Start Guide are to federal employment law expert, Peter Broida's, treatise *A Guide to Merit Systems Protection Board Law and Practice* (Dewey Publishing, Inc.), to which ***cyber*FEDS®** has exclusive Web rights.

**Establishing nexus -- in general**

* Under [5 USC 7513](http://www.cyberfeds.com/CF3/servlet/GetReg?cite=5+USC+7513), an agency can take adverse action against an employee only for such cause as will promote the efficiency of the service. To establish this nexus, an agency must show by a preponderance of the evidence that the employee's misconduct is likely to have an adverse effect on the agency's functioning. *Mings v. Department of Justice*, [87 FMSR 7013](http://www.cyberfeds.com/CF3/servlet/GetCase?cite=87+FMSR+7013), 813 F.2d 384 (Fed. Cir. 1987).
* ***Broida:*** Nexus may be broadly stated to encompass the requirement inherent in 5 USC 7513(a) that an action against an employee advances the efficiency of the federal service. The requirement of nexus established in 5 USC 7513 is reiterated by 5 USC 2302 (b)(10), making it a prohibited personnel practice to take a personnel action to "discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others." [*Broida Guide to MSPB Law:* Concept of Nexus](http://www.cyberfeds.com/CF3/servlet/CFSearchAll?searchstring=%7BConcept+of+Nexus%7D+within+doctitle&searchscreen=%2FCF3%2Fadvmspbsearch.jsp&destination=index.jsp%3Ftopic%3DMain%26results%3Dyes&db=BROIDA_MSPB&thesaurus=yes&sortorder=document&results=20&doctype=&restrictors=doctype&topic=Main).
* When the MSPB analyzes whether an agency has shown a nexus between an employee's misconduct and her duties, the board will consider whether the employee's removal will protect the integrity of the service as well as whether she is able to perform the duties of her position. *Doerr v. Office of Personnel Management*, 106 LRP 70443, 104 MSPR 196, (MSPB 2006).
* ***Broida:*** There are three general ways of establishing nexus between an agency's action and an employee's off-duty conduct: 1) A rebuttable presumption of nexus may arise in certain egregious circumstances; 2) the agency may show, by a preponderance of evidence, that the misconduct at issue has adversely affected the employee's or coworkers' job performance or the agency trust and confidence in the employee's job performance; and 3) it may show, by a preponderance of the evidence, that the misconduct interfered with or adversely affected the agency's mission. [*Broida Guide to MSPB Law:* *Merritt* and Presumptions of Nexus](http://www.cyberfeds.com/CF3/servlet/CFSearchAll?searchstring=%7BMerritt+and+Presumptions+of+Nexus%7D+within+doctitle&searchscreen=%2FCF3%2Fadvmspbsearch.jsp&destination=index.jsp%3Ftopic%3DMain%26results%3Dyes&db=BROIDA_MSPB&thesaurus=yes&sortorder=document&results=20&doctype=&restrictors=doctype&topic=Main), *citing* *Moten v. U.S. Postal Service*, 89 FMSR 5413, 42 MSPR 282 (MSPB 1989).
* There is sufficient nexus between an employee's conduct and the efficiency of the service where the conduct occurred at work. *Miles, Sr. v. Department of the Navy*, 106 LRP 37763, 102 MSPR 316 (MSPB 2006).
* Nexus is automatically established when criminal conduct occurs while the employee is on duty. *Dalton v. Department of Justice*, [95 FMSR 5061](http://www.cyberfeds.com/CF3/servlet/GetCase?cite=95+FMSR+5061), 66 MSPR 429 (MSPB 1995).

**Establishing nexus -- specific circumstances**

* Where an employee's behavior toward his supervisor is disrespectful and disruptive to the workplace, there is a reasonable nexus between the employee's actions and the efficiency of service. *Riley v. U.S. Postal Service*, 102 FMSR 7035 (Fed. Cir. 2002, *unpublished*).
* An appellant's lack of candor during an administrative inquiry directly impacts the efficiency of the service, as it strikes at the very heart of the employer-employee relationship. *Ludlum v. Department of Justice*, 101 FMSR 5001, 87 MSPR 56 (MSPB 2000).
* Any sustained charge of AWOL is inherently connected to the efficiency of the service, and therefore nexus is automatically established. *Bryant v. National Science Foundation*, [97 FMSR 7004](http://www.cyberfeds.com/CF3/servlet/GetCase?cite=97+FMSR+7004), 105 F.3d 1414 (Fed. Cir. 1997).
* Management's apprehension for the safety of employees is a valid consideration in determining whether a nexus exists. *Beasley v. Department of Defense*, [92 FMSR 5032](http://www.cyberfeds.com/CF3/servlet/GetCase?cite=92+FMSR+5032), 52 MSPR 272 (MSPB 1992).
* A showing that the public's confidence in the agency would be undermined by the appellant's misconduct, thereby making it harder for other employees to do their jobs, establishes a nexus between the misconduct and service efficiency. *Allred v. Department of Health and Human Services*, [86 FMSR 7028](http://www.cyberfeds.com/CF3/servlet/GetCase?cite=86+FMSR+7028), 786 F.2d 1128 (Fed. Cir. 1986).
* Because law enforcement officers are held to a higher standard of conduct than other employees, agencies can more easily demonstrate nexus in adverse actions based on LEO misconduct. *Stines v. Department of Justice*, [84 FMSR 5714](http://www.cyberfeds.com/CF3/servlet/GetCase?cite=84+FMSR+5714), 22 MSPR 511 (MSPB 1984).

**Off-duty misconduct -- in general**

* An agency can show a nexus linking an employee's off-duty misconduct with the efficiency of the service through: 1) a rebuttable presumption of nexus that arises in certain egregious circumstances based on the nature and gravity of the misconduct; 2) a showing that the misconduct affects the employee's or his coworkers' job performance, or management's trust and confidence in the employee's job performance; or 3) a showing that the misconduct interfered with or adversely affected the agency's mission. *Kruger v. Department of Justice*, [87 FMSR 5004](http://www.cyberfeds.com/CF3/servlet/GetCase?cite=87+FMSR+5004), 32 MSPR 71 (MSPB 1987).
* Nexus can be proven by showing that an employee engaged in off-duty misconduct that is directly opposed to the agency's mission. There is no need to rely on a presumption of nexus. *Kruger v. Department of Justice*, [87 FMSR 5004](http://www.cyberfeds.com/CF3/servlet/GetCase?cite=87+FMSR+5004), 32 MSPR 71 (MSPB 1987); *Doe v. Department of Justice*, 106 LRP 48614, 103 MSPR 135 (MSPB 2006).
* A nexus exists when the agency can show that the appellant's off-duty misconduct caused it to lose trust and confidence in the appellant's ability to perform his duties. *Royster v. Department of Justice*, [93 FMSR 5310](http://www.cyberfeds.com/CF3/servlet/GetCase?cite=93+FMSR+5310), 58 MSPR 495 (MSPB 1993); *Doe v. Department of Justice*, 106 LRP 48614, 103 MSPR 135 (MSPB 2006).
* ***Broida:*** Nexus inheres in off-duty misconduct if it has a direct impact on the employing agency, even if it has nothing to do with an employee's job. [*Broida Guide to MSPB Law:* Off-Duty Actions on Agency Premises](http://www.cyberfeds.com/CF3/servlet/GetDocByTitle?doctitle=Section+B:+Specific+Nexus+Determinations,+Subsection+05:+Off-Duty+Actions+on+Agency+Premises).
* ***Broida:*** Nexus is established if an altercation between employees starts on duty and continues off duty. The agency has a right and responsibility to maintain discipline and order among its employees. [*Broida Guide to MSPB Law:* Off-Duty Actions on Agency Premises](http://www.cyberfeds.com/CF3/servlet/GetDocByTitle?doctitle=Section+B:+Specific+Nexus+Determinations,+Subsection+05:+Off-Duty+Actions+on+Agency+Premises).
* ***Broida:*** Off-duty offenses involving fraud support a demonstration of nexus more through injury to notions of trust and confidence than through a demonstration that an employee's ability to perform his duties has been impaired. [*Broida Guide to MSPB Law:* Off-Duty Offenses.](http://www.cyberfeds.com/CF3/servlet/GetDocByTitle?doctitle=Section+B:+Specific+Nexus+Determinations,+Subsection+07:+Fraud+and+Theft,+Part+A:+Off-Duty+Offenses)

**Off-duty misconduct -- rebuttable presumption**

* A nexus cannot be presumed based only on the fact that an employee was arrested for an off-duty offense. *Roby v. Department of Justice*, [93 FMSR 5425](http://www.cyberfeds.com/CF3/servlet/GetCase?cite=93+FMSR+5425), 59 MSPR 426 (MSPB 1993).
* Off-duty sexual misconduct involving a minor is sufficiently egregious to establish a rebuttable presumption of nexus. *Allred v. Department of Health and Human Services*, [86 FMSR 7028](http://www.cyberfeds.com/CF3/servlet/GetCase?cite=86+FMSR+7028), 786 F.2d 1128 (Fed. Cir. 1986).
* An off-duty assault and beating of a supervisor is sufficiently egregious to establish a rebuttable presumption of nexus. *Dominguez v. Department of the Air Force*, [86 FMSR 7080](http://www.cyberfeds.com/CF3/servlet/GetCase?cite=86+FMSR+7080), 803 F.2d 680 (Fed. Cir. 1986).
* Falsification of records, theft of government property, and unauthorized possession of government property are sufficiently egregious to establish a rebuttable presumption of nexus. *Kumferman v. Department of the Navy*, [86 FMSR 7023](http://www.cyberfeds.com/CF3/servlet/GetCase?cite=86+FMSR+7023), 785 F.2d 286 (Fed. Cir. 1986).
* Off-duty assault with a deadly weapon is sufficiently egregious to establish a rebuttable presumption of nexus. *Faint v. U.S. Postal Service*, [84 FMSR 5719](http://www.cyberfeds.com/CF3/servlet/GetCase?cite=84+FMSR+5719), 22 MSPR 495 (MSPB 1984).
* When an agency establishes a rebuttable presumption of nexus based on the nature and gravity of an appellant's alleged violent, sexual criminal conduct, the fact that coworkers are unaware of the conduct will not rebut the presumption. *Johnson v. Department of Health and Human Services*, [84 FMSR 5699](http://www.cyberfeds.com/CF3/servlet/GetCase?cite=84+FMSR+5699), 22 MSPR 521 (MSPB 1984).
* Private indebtedness is not egregious misconduct sufficient to warrant a presumption of nexus. However, when the indebtedness involves the agency, a nexus can be established. *Vilt v. Marshals Service*, [83 FMSR 7054](http://www.cyberfeds.com/CF3/servlet/GetCase?cite=83+FMSR+7054), 16 MSPR 192 (MSPB 1983).

**Off-duty misconduct - rebutting the presumption**

* An employee may rebut the presumption of nexus by showing that his off-duty misconduct will not adversely affect his or his coworkers' performance or interfere with the agency's work. *Broadnax v. U.S. Postal Service*, [84 FMSR 5987](http://www.cyberfeds.com/CF3/servlet/GetCase?cite=84+FMSR+5987), 24 MSPR 319 (MSPB 1984).
* Statements from coworkers in support of an employee and evidence of the employee's continued good performance can serve as rebuttal to a presumed nexus. However, they do not necessarily outweigh management's apprehension about the effect of the employee's continued employment on the efficiency of the service and the public's perception of the agency. *Jordan v. Department of the Air Force*, [88 FMSR 5130](http://www.cyberfeds.com/CF3/servlet/GetCase?cite=88+FMSR+5130), 36 MSPR 409 (MSPB 1988).
* If an employee successfully rebuts the presumption of nexus, the agency has an opportunity to prove the existence of nexus through evidence such as testimony from supervisors regarding their loss of confidence in the appellant or negative publicity. *Honeycutt v. Department of Labor*, [84 FMSR 5720](http://www.cyberfeds.com/CF3/servlet/GetCase?cite=84+FMSR+5720), 22 MSPR 491 (MSPB 1984).

**Off-duty misconduct - case examples**

* The requisite nexus was established where an appellant failed to maintain access to an agency computer system due to his personal debt issues. *Adams v. Department of the Army*, 107 LRP 10720, 105 MSPR 50 (MSPB 2007).
* Where an appellant engaged in criminal or dishonest conduct of a serious nature, and her position required credibility generally and was tied to the agency's interest in maintaining the public trust, there was a nexus between drug-related charges against the appellant and her position. *Doerr v. Office of Personnel Management*, 106 LRP 70443, 104 MSPR 196 (MSPB 2006).
* Where an FBI special agent videotaped his sexual activities with three women -- two of whom were FBI employees -- without their knowledge or consent, the agency established the required nexus. The FBI had the right to hold its special agents to a high standard of conduct. The appellant's failure to live up to this standard adversely affected his division's operations and caused the agency to lose trust and confidence in him. *Doe v. Department of Justice*, 106 LRP 48614, 103 MSPR 135 (MSPB 2006).
* A nexus existed where the charge that was sustained -- violation of the zero-tolerance policy on violence in the workplace -- was serious and adversely impacted the agency's mission of providing service to its customers and a safe environment for its employees. *Wiley v. U.S. Postal Service*, 106 LRP 41624, 102 MSPR 535 (MSPB 2006).
* The nexus between the misconduct of a Border Patrol agent and the efficiency of the service was readily apparent where the appellant twice posted bond for a young woman living in his home who was arrested and indicted for felony cocaine possession. The Border Patrol Handbook stated that "patrol agents should avoid all associations or places that may degrade them or their positions in the eyes of the public." *Office of Personnel Management v. Dale*, 104 LRP 4027, 355 F.3d 1375 (Fed. Cir. 2004).
* An appellant's off-duty misconduct of switching price tags on merchandise and purchasing and attempting to purchase the merchandise at a reduced price established that she compromised the agency's trust in her ability to function in her high-level management position in which she had fiduciary responsibilities for up to $25,000. The agency proved a nexus between the appellant's criminal misconduct and her position. *Stuhlmacher v. U.S. Postal Service*, 101 FMSR 5347, 89 MSPR 272 (MSPB 2001).
* A sufficient nexus was established where an area program manager for the Morale, Welfare, and Recreation Department at a Marine Corps base engaged in an adulterous relationship with the wife of a Marine major assigned to a unit supported by the appellant while the major was deployed overseas. *Brown v. Department of the Navy*, 101 FMSR 7002, 229 F.3d 1356 (Fed. Cir. 2000).
* Publicity about an appellant's off-duty criminal misconduct that identifies him as an agency employee can adversely affect the agency's reputation and its dealings with the public and can serve as proof of nexus. *Graham v. U.S. Postal Service*, [91 FMSR 5439](http://www.cyberfeds.com/CF3/servlet/GetCase?cite=91+FMSR+5439), 49 MSPR 364 (MSPB 1991).
* When off-duty misconduct occurs in a small community, adverse publicity can have a greater effect on the agency's reputation than it might in a large city, and therefore it is evidence bearing upon nexus. *Stines v. Department of Justice*, [84 FMSR 5714](http://www.cyberfeds.com/CF3/servlet/GetCase?cite=84+FMSR+5714), 22 MSPR 511 (MSPB 1984).