

# MORANDUM

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
OFFICE OF THE SECRETARY

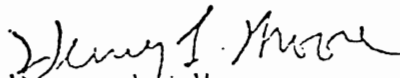
Mr. Alexander M. Schmidt, M.D.  
Commissioner of Food and Drugs  
Food and Drug Administration  
Public Health Service

DATE: MAY 24 1976

Employee Appeals Examiner  
Employee Appeals Division  
Office of Personnel Policy and Planning, OPT

Proposal to Remove Dr. J. Anthony Morris from the Federal Service

Examiner's Report of Findings and Recommendations on the proposed action is attached, along with the Hearing File.

  
Henry L. Moore

## Attachments

1. Examiners Report
2. Hearing File

Employee Appeals Examiner's Report of Findings and Recommendations on proposed removal of J. Anthony Morris from the Federal Service under Authority of Subpart B, Part 752, Civil Service Regulations.

INTRODUCTION

The agency proposed to remove Dr. J. Anthony Morris from the Federal Service for reasons of "Insubordination" and "Inefficiency." The "Insubordination" Charge relates to the alleged failure of the employee to attend and participate in meetings as required; failure to furnish requested information to his supervisors; making unauthorized expenditure of funds; and failing to submit protocols.

The charge of "Inefficiency" concerns Dr. Morris' research activities.

The employee denied all charges and requested a hearing before a Department Examiner which was opened on March 16, 1976.

FINDINGS ON PROCEDURE

The employee was notified of the proposed removal by advance notice dated July 11, 1975, which advised him in specific detail of the reasons for the proposal and of his right to reply; to representation; to review the material relied upon to support the charges; and his right to a hearing before a Department Examiner. A hearing was requested and was opened in Bethesda, Maryland on March 16, 1976. Employee Representative raised a number of procedural questions at the prehearing held at 9 a.m. on March 16, 1976, all of which were resolved as indicated in transcript dated March 16, 1976. I find that the filing and processing of this action was without material procedural error.

FINDINGS ON SUBSTANTIVE ISSUES

REASON I. INSUBORDINATION

REASON I.A.1.

The employee is charged with failing to furnish a requested publication of Dr. Jerome Schulman's in support of his statement made at a February 6, 1974 meeting " . . . that influenza vaccine sensitized laboratory animals to adverse effects from live influenza virus infection . . . ." By his own admission in his written response dated September 20, 1975 (Tab 12) he

"mentioned Dr. Schulman" in support of his discussion at the February 6, 1974 meeting. The employee professes inability to recall Dr. Ennis' requesting a copy of Dr. Schulman's "publication" on the subject. However, I find Dr. Ennis' version of the incident (transcript Vol VII, Page 3-120, Lines 3-25 and Page 3-121, lines 1-11) to be the more believable. There is little doubt that Dr. Morris' statements were regarded by Dr. Ennis as not only scientifically significant, but also in contradiction of his personal beliefs from his experience in working with Dr. Schulman. It follows, therefore, that Dr. Ennis would have displayed more than passing interest, and in fact would almost certainly have asked for the source of published literature on the subject; leading inevitably to a request for a copy of same. Dr. Morris' willful failure to comply with Dr. Ennis' request constitutes disobedience of a proper work-related request of a superior, which by definition is insubordination. This reason is sustained by the evidence.

REASON I.A.2.

Withdrawn by Deciding Official at Tab 22.

REASON I.A.3.

The evidence shows that Dr. Morris was scheduled to make a presentation at the meeting held at 1 p.m. on July 3, 1974. Despite Dr. Morris' somewhat self-contradictory recollections (transcript Vol 5, Pages 5-128/5-130 and Vol 6, Pages 6-38/6-39) I find that he had adequate notice of his responsibility to make a presentation on the above date and that his willful failure to do so constituted insubordination. This reason is sustained.

REASON I.A.4.

Although the evidence, as characterized by Dr. Ennis' memo dated January 3, 1974, (Enclosure #1 to advance notice) would appear to set the general criteria for the "Wednesday afternoon meetings," I am unable to conclude that the directive(s) from Dr. Ennis were such as to exclude the introduction of materials not directly related to each scientists' research program. I find, therefore, that the showing of the film by Dr. Morris at the meeting on July 10, 1974, did not constitute insubordination. This reason is not sustained.

REASON I.A.5.

Dr. Ennis' memorandum dated December 12, 1974, (Enclosure #1 to advance notice) clearly requires a scheduled speaker who is unable to appear, to arrange for the substitution of another scheduled speaker from within the Division of Virology (under-scoring added). Dr. Morris' decision to arrange for a speaker from outside the division, without prior consultation with Dr. Ennis, constituted willful disregard of a proper order from his supervisor. An act of this nature is insubordination, no matter how well motivated. This reason is sustained.

REASON I.A.6.

Dr. Morris was directed by memorandum dated June 2, 1975, (Enclosure #1) from his supervisor, Dr. Ennis, to make the expected scheduled presentation on June 4, 1975. By his own admission in his written response (Tab 12) Dr. Morris chose not to make the presentation. Willful failure to carry out a proper order constitutes insubordination. This reason is sustained.

REASON I.B.

This reason not sustained as to insubordination. Willful failure of Dr. Morris to submit the requested reports is not established by the evidence.

REASON I.C.

Not sustained by the evidence, which indicates that Dr. Morris was never aware that the mice ordered would cost the Virology Division a prohibited sum of money (over \$100.00).

REASON I.D.

Withdrawn by the Deciding Official.

REASON II - INEFFICIENCY

REASON II.A.

The evidence establishes that Dr. Morris believed that he had made significant findings with regards to his TS-1E experiments as early as mid-1973 or early 1974, with frequent new data being developed with some frequency

and regularity during the following months. The lack of systematic records keeping or reporting to superiors precludes any definite chronological review of progress of the TS-1E experiments, however, Dr. Morris' representation of his work as "too tentative and inconclusive" to be presented for peer group evaluation in Mid-1975 appears to be invalid. Further, his failure to keep his supervisor apprised of his progress on this experiment and to submit his work for peer group review, deprived the agency of potentially valuable scientific information and himself and associates of potentially useful and valuable exchanges of scientific data. This resulted in wasted effort properly characterized by the agency as inefficient. This reason is sustained.

REASON II.B.1.

INEFFICIENCY IN RESEARCH PROJECT RATIONALE AND RELEVANCE.

REASON II.B.1.a.

Dr. Morris is charged with conducting "poorly planned" experiments on the effect of antibiotics in vaccines. Specifically, the agency contends that the antibiotic (penicillin) used in this experiment was "questionable" because penicillin is no longer used in the manufacture of vaccines. Further, that the choice of animals (chickens) was deficient because there is little or no relevancy of cancer in chickens to cancer in man.

Dr. Morris' written reply (Tab 12, Pages 29-30) defends his research on Marek's Disease, observing that penicillin was at one time used extensively in the manufacture of vaccines and that streptomycin, which he also used in his experiments, is still used in the manufacture of vaccines.

A large part of this controversy centers around the basic goal of this research. Dr. Morris' published paper as well as his written and oral replies would seem to be concerned to some degree with a "pure science" approach, although he does relate his animal cancer research, at least tenuously, to potentially immediate and real benefits for research on cancer in humans. Management, on the other hand, obviously feels that because of a lack of clearly stated directions and concrete goals related to the agency research program, the experiments were "poorly planned" and "questionable." Another real issue appears to be the direction of research efforts and the utilization of agency resources. Although

management raises apparently valid questions regarding Dr. Morris' research, little or no evidence was introduced to show that Dr. Morris was given definitive criteria to follow. The agency's indictment of Dr. Morris' efforts in this regard appears to be somewhat ex post facto in nature, in the absence of evidence showing that Dr. Morris was furnished research criteria by his superiors which were materially different than those which he pursued on his own initiative.

In summary, it appears that Dr. Morris worked independently, under broad general program outlines, the specific research being left to his discretion as supervisory research microbiologist. Management's belated charge of inefficiency in his research projects of several years duration appears to be inadequately supported by the evidence. This reason is not sustained.

REASON II.B.1.b.

The employee and the agency seem to be more in agreement than disagreement on the A-2 virus research. The agency's conclusions as stated in the proposal to the effect that the cytotoxic nature of the A-2 agent decreased the likelihood of its escaping detection by FDA required safety tests does not appear to affect its potential as a contaminant, but merely decreases the likelihood that such contamination would escape detection. Since few areas of human endeavor (even in the sciences) are infallible, it is probable that at least some contamination might go undetected. I conclude, therefore, that this reason for the proposal is not sustained.

REASON II.B.1.c.

The conclusion that this research is of both low priority and little real value to the agency's scientific mission is well supported by the evidence. This reason is sustained.

REASON II.B.2.

INEFFICIENCY IN RESEARCH PROJECT DESIGN AND EXECUTION.

REASON II.B.2.a.b.c.

There are material differences of opinion as to the purpose and the wisdom of the selection of the mice used for the

TS-1(E) experiments. The agency view is that Dr. Morris' selection of "outbred" strain of mice reduced the probability of valid findings relative to the oncogenic potential of the vaccine (TS-1E). Dr. Morris in his written reply denied that his experiment was concerned with oncogenicity, however, his report of preliminary findings dated January 8, 1975, (Enclosure V) would seem to indicate otherwise. There also appears to be validity to the agency charge that Dr. Morris failed to exercise sufficient caution in the randomizing and housing of the mice used in this experiment. The evidence shows further that Dr. Morris failed to follow proper experimental and records keeping procedures as charged in II.B.2.b. and c. I find, therefore, that the preponderance of evidence sustains these reasons.

REASON II.B.2.d.

This reason is sustained.

REASON II.B.2.e.

Evidence furnished is inconclusive and the reason appears to lack relevancy to the intent and nature of the experiments. Not sustained.

REASON II.B.2.f.

Use of the term "certain of your experiments", etc., makes this charge so vague and lacking in specificity as to fail to meet the requirement of FPM Supplement 752-1, Subchapter S4-3, that the advance notice be sufficiently specific so as to afford the employee a fair opportunity to refute the reasons for the proposal. This reason is not sustained.

REASON II.B.2.g.

Dr. Morris' written response to this charge consists mainly of numerous complaints of lack of support by management for his resource requirements. Evidence furnished by the agency appears to establish overwhelmingly that the experiment was flawed by many inadequacies of methodology rather than lack of resources. This reason is sustained.

SUMMARY

In summary I find that this proposal was filed and processed without material error.

I find that reasons I.A.1., I.A.3., I.A.5., I.A.6., II.A., II.B.2.a.b.c., II.B.2.d., and II.B.2.g. are sustained.

Reasons I.A.4., I.B., I.C., II.B.1.a., II.B.1.b., II.B.2.e and II.B.2.f. are not sustained.

Reason I.A.2. and I.D. were withdrawn by the agency.

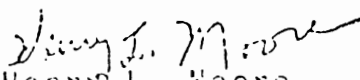
Many of the reasons sustained relate to the charge of insubordination. There is little doubt that Dr. Morris deliberately failed to accept or to follow proper directions, and orders of his supervisors. He admits and attempts to mitigate this behavior throughout his responses to the charges. There is also evidence that much of Dr. Morris' defiance of authority stemmed from changes in management personnel and poor communication to subordinates of changes of management philosophy. Dr. Morris, it appears, has more or less operated his laboratory under only broad general program directions for any number of years. His resistance to radical changes in supervision, while ill advised, perhaps does not entirely defy understanding.

I find further that his "insubordination", while in some instances willful, to be generally lacking in malice, and in most instances of minimal seriousness.

The sustained reasons concerned with scientific inadequacies are found to be less substantial even than the reasons related to insubordination. Many are only marginally supported by the evidence and are sustained to a large degree solely on the basis of overwhelming peer opinions rather than conclusive hard (best) evidence of inefficiency. I conclude, because of the nature of the charges and the evidence in support of them, that the proposed removal is excessively severe for the reasons which are sustained.

#### RECOMMENDATION

I recommend that the proposed removal be reduced to a suspension of 5 days without pay.

  
Henry L. Moore

cc: James O. Gesling