



# ORDER

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## EPA ADMINISTRATIVE GRIEVANCE SYSTEM

1. PURPOSE. This order describes the EPA administrative grievance procedure. The procedure gives employees an opportunity to present and obtain prompt and fair-minded consideration of grievances. The provisions of this Order conform to Office of Personnel Management regulations and standards and *Executive Order 13839: Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles* (83 Fed. Reg. 25343 (Jun. 1, 2018)).
2. POLICY.
  - a. Employees, supervisors, and management officials will attempt to resolve grievances at the lowest possible organizational level. Toward this end, employees should discuss their grievances with their immediate supervisor where appropriate; and failing prompt and satisfactory adjustment present their grievances to the lowest level where they reasonably believe they will receive a fair and prompt consideration of the matter. Supervisors and management officials will deal promptly and fairly with all grievances presented to them.
  - b. In presenting a grievance, an employee shall be free from restraint, interference, coercion, discrimination, or reprisal; shall have the right to be accompanied, represented, and advised by a representative of his/her own choosing, subject to the limitations discussed in paragraph 6b below, and shall be assured a reasonable amount of official time to present, but not prepare, his/her case if he/she is otherwise in an active duty status.
  - c. When an employee designates another individual as his/her representative, the representative, in presenting a grievance under the provisions of this order, shall be free from restraint, interference, coercion, discrimination, or reprisal. If the representative is an Agency employee, he/she shall have a reasonable amount of official time to present, but not prepare, the case if he/she is otherwise in an active duty status.
  - d. Reasonable time is the actual time required for an employee (and/or his/her representative) to present or discuss a grievance with the appropriate management official under the procedures of this Order.

- e. Supervisors shall make their employees available if requested by the deciding or fact-finding official, and if it is administratively feasible to comply with the request.
- f. Employees who provide information or testimony during the fact-finding process shall be free from restraint, interference, coercion, discrimination or reprisal.

3. EMPLOYEE COVERAGE.

- a. This Order applies to all employees of the Environmental Protection Agency, including employees in the Senior Executive Service, and Commissioned officers of the Public Health Service except:
  - (1) Employees excluded from coverage by 5 C.F.R.771.206 (b) Certain noncitizens, aliens, nonappropriated fund employees, certain medical personnel, Foreign Service Officers and employees, and employees excluded by the Office of Personnel Management as a class on the recommendation of the Administrator.
  - (2) Bargaining unit employees, as defined in 5 C.F.R.771.202, grieving issues falling within the scope of the negotiated grievance procedure. Bargaining unit employees may utilize the administrative grievance procedure for any matters covered in subpart (4) below which are not covered under the applicable negotiated grievance procedure.
- b. A group of employees, acting as individuals, may join together in submitting one grievance common to all and present the grievance as a group, provided that each would present the grievance to the same official if he/she presented an individual grievance. Officials to whom grievances are presented may combine several individual grievances into one grievance, provided that each employee is grieving the same matter.

4. MATTERS COVERED. Except as provided for in paragraph 5 below, the EPA administrative grievance procedure applies to any matter of concern or dissatisfaction relating to the employment of an employee, group of employees acting as individuals, or former employee, which is subject to the control of Agency management and for which management is able to grant personal relief. A request for disciplinary or other action affecting another employee will not be accepted as a grievance because the remedy requested is not personal in nature.

5. MATTERS EXCLUDED FROM COVERAGE.

- a. The content of published Agency regulations and policy.
- b. Decisions which employees may appeal to the Merit Systems Protection Board or which are subject to final administrative review by the Office of Personnel Management or the Equal Employment Opportunity Commission. Matters administered by the General Accounting Office or the Office of Workers Compensation Program are also excluded.
- c. Nonselection for promotion from among a group of candidates properly ranked and certified according to EPA's Merit Promotion Plan.
- d. A preliminary warning notice of an action which, if effected, would be covered under this Order or would be appealable or reviewable outside of the Agency e.g., notices, of proposed adverse action.
- e. A return of a Senior Executive Service (SES) career appointee to the General Schedule or another pay system during the one-year period of probation or for less than fully successful executive performance under 5 U.S.C. 3592.
- f. A reassignment of an appointee following the appointee's receipt of an unsatisfactory rating under 5 U.S.C. 4314.
- g. The termination under 5 C.F.R.359 Subpart D, of an SES career appointee during probation for unsatisfactory performance.
- h. An action taken in accordance with the terms of a formal agreement voluntarily entered into by an employee which: (a) assigns the employee from one geographical location to another; or (b) returns an employee from an overseas assignment.
- i. An action terminating a temporary promotion within a maximum period of two years and returning the employee to the position from which he/she was temporarily promoted, or to a different position that is not at a lower grade or pay than the position from which he/she was temporarily promoted.
- j. An action terminating a term promotion at the completion of the project or specified period, or at the end of a rotational assignment in excess of two years but not more than five years, and returning the employee to the position from which promoted or to a different position of equivalent grade and pay in accordance with 5 C.F.R.335.102 (g).

- k. The substance of critical elements and performance standards of an employee's position which were developed in accordance with 5 U.S.C. 43 Subchapter I and 5 C.F.R.430.
- l. The assignment of a rating of record given in accordance with 5 U.S.C. 43 Subchapter I and 5 C.F.R. Part 430.
- m. Receipt or non-receipt of: 1) an incentive, honorary, time-off, cash or performance award under the provisions of 5 U.S.C. 45, 5 U.S.C. 5384 and 5403; or 2) a quality step increase under the provisions of 5 U.S.C. 5336.
- n. Receipt or non-receipt of recruitment, retention, or relocation payments in accordance with 5 U.S.C. 5753 and 5754 and 5 C.F.R. 575 Subparts A, B and C.
- o. A merit pay determination (other than initial coverage decision) or a merit pay increase or the lack of a merit pay increase.
- p. Termination of initial probationers under 5 C.F.R.315, Subpart H.
- q. A performance appraisal given to an employee in the SES.
- r. Separation or termination of appointment actions.
- s. A return of an employee from an initial appointment as a supervisor or manager to a nonsupervisory or nonmanagerial position for failure to satisfactorily complete the probationary period under 5 U.S.C. 3321(a) (2) and 5 C.F.R. 315.
- t. Grievances initiated by Commissioned Officers of the Public Health Service falling within coverage of the Public Health service grievance procedure.

6. GENERAL STANDARDS AND REQUIREMENTS.

- a. An employee is entitled to communicate with:
  - (1) His/her servicing human resources staff; or
  - (2) The Director, Office of Civil Rights or an Equal Employment Opportunity Officer or Counselor.
- b. An employee has the right to be accompanied, represented and advised by a representative of his or her own choosing, except that the Agency may disallow the choice of another Agency employee as a representative if:

- (1) The employee's choice conflicts with priority needs of the Agency;
  - (2) The employee's choice would result in unreasonable cost to the government; or
  - (3) The employee's choice creates a conflict of interest or conflict of position situation. The conflict must actually exist to be disqualifying. Situations which might create a conflict are not sufficient to support disallowance of a representative. An example of a conflict of interest would be a union official representing a management or supervisory official. Examples of conflict of position situations would be a personnel specialist representing an employee with a complaint against management, a supervisor representing an employee with a complaint against management, or an attorney in the Office of General Counsel, including attorneys in the Offices of Regional Counsel, representing an employee with a complaint against management.
- c. Disallowance of an employee's choice of representative shall not be the basis for a separate grievance. The decision is reviewable by the Director, Office of Human Resources.
- d. If the employee's chosen representative is an Agency employee, he/she must notify his/her immediate supervisor if he/she agrees to represent the employee. Official time spent in presenting the grievance is excused absence and shall be recorded on the time and attendance record under Hours Absent "Other."
- e. All grievances will be processed and the decision letter issued to the employee within 100 CALENDAR DAYS after the employee initially presented the grievance. Employees, supervisors and management officials will comply with the intermediate time limits in this order to meet the overall deadline.
- f. The official to whom the grievance is initially presented or the deciding official may cancel a grievance:

- (1) At the employee's written request;
- (2) Upon termination of the employee's employment with the Agency unless the personal relief sought by the employee may be granted after termination of his/her employment;
- (3) Upon the death of the employee unless the grievance involves a question of pay or unless management may grant other meaningful remedy; and
- (4) For failure to prosecute if the employee does not furnish information specified in paragraphs 8a and 9a or does not proceed according to the requirements of this Order when processing a grievance.

7. DECIDING OFFICIALS.

- a. Deciding officials are responsible for making the final Agency decision on the grievance.
- b. The following are the deciding officials for the employees under their jurisdiction:
  - (1) Administrator
  - (2) Deputy Administrator
  - (3) Assistant Administrators
  - (4) Associate Administrators
  - (5) The Inspector General
  - (6) The General Counsel
  - (7) Regional Administrators
- c. Deciding officials may redelegate this authority; however, such delegation may not be lower than Division Director level or equivalent.
- d. If the appropriate deciding official has been involved in any way in the circumstances leading to the grievance, the case will be referred to the next higher designated deciding official.
- e. The phrase "involved in any way" means that the official was part of the decision-making process. Simple knowledge of the matter or performance of a ministerial function does not constitute involvement.

8. INFORMAL GRIEVANCE PROCEDURE.

a. Presenting the Grievance.

(1) Employees will present their grievance orally or in writing to:

- (a) The lowest level of supervision within the employee's immediate organization that has the authority to grant the personal relief sought by the employee. This level will be the employee's immediate supervisor unless the supervisor does not have the authority required to grant the relief requested or the employee is convinced that the immediate supervisor will not objectively consider the facts of the case and/or the remedy requested because the supervisor has already made clear his/her position on the matter. In this case, the employee will present his/her grievance to the next higher supervisory level that has the necessary authority; or
- (b) An official at the lowest level of administration in the Agency who has authority to take corrective action on matters outside the jurisdiction of the employee's organization. For example, if an employee feels that his/her experience was not properly credited in a merit promotion action, he/she should present the grievance to the human resources officer with jurisdiction over the promotion case.

(2) The employee must state specifically that he/she is presenting a grievance; the personal relief sought; and the name, organizational unit and location of his/her chosen representative, if any.

b. Time Limits. An employee shall present a grievance concerning a specific act or occurrence within 15 CALENDAR DAYS of the date of the act or occurrence or the date he/she became aware of it. The official receiving the grievance may extend this time limit for good cause shown by the employee.

c. Disallowance of Representative.

(1) The official to whom the grievance is initially presented, the deciding official or the representative's immediate supervisor may disallow the employee's choice of representative for one of the reasons in paragraph 6b. Any of the above officials must do this immediately upon notification of the identity of the representative. He/she will document the basis for disallowance in writing and transmit copies to the employee and to the representative within 5 CALENDAR DAYS.

- (2) The employee may request the Director, Office of Human Resources to review the basis for the disallowance as an issue separate from the grievance. The employee must request this review within 5 CALENDAR DAYS of receipt of the disallowance decision. There will be no further processing of the initial grievance until the representation issue is resolved.
  - (3) The employee or the representative will prepare a written rebuttal and transmit it along with the initial disallowance decision to the Director, Office of Human Resources.
  - (4) The Director, Office of Human Resources will consider the matter and issue a final written decision to the employee with a copy to the representative and the official who made the original disallowance decision within 5 CALENDAR DAYS of receipt of the rebuttal. The grievance procedure will resume at the point where it was previously stopped.
  - (5) The decision of the Director, Office of Human Resources is final with no further right of appeal.
- d. Disposition of Informal Grievance. Within 30 CALENDAR DAYS of initially receiving the grievance (written or oral), the immediate supervisor or other official must:
- (1) Achieve a mutually satisfactory resolution of the matter, or
  - (2) Inform the employee in writing that the remedy requested will not be effected and that the employee may pursue the matter in accordance with the procedures below.

9. FORMAL GRIEVANCE PROCEDURE.

- a. Presenting the Grievance.
- (1) The employee must present the grievance in writing to the appropriate official named in paragraph 7 within 7 CALENDAR DAYS of notification that the relief requested during the informal grievance proceeding will not be granted or within 7 CALENDAR DAYS of the completion of the 30 CALENDAR DAY PERIOD, if no response has been received from the appropriate supervisor.
  - (2) The employee must state in the grievance his/her name, organizational unit,

position title and grade, the specific details and facts of the grievance, the personal relief sought, the dates the grievance was presented informally and the results of that attempt to resolve the grievance. The employee shall also include the name, organizational unit and location of his/her choice of representative. Representation challenges at this point in the proceeding will be resolved according to the procedure in paragraph 8c, above.

b. Action by Deciding Official.

- (1) The official receiving a written grievance shall immediately determine whether he/she is the appropriate official in accordance with paragraph 7. If the official determines that he/she is not the appropriate deciding official, he/she must immediately forward the grievance to the appropriate official and inform the grievant and his/her representative in writing of such action.
- (2) The deciding official shall request that the employee supply additional information if the grievance does not meet the requirements of paragraph 9a. If the employee fails to provide the required information within 7 CALENDAR DAYS, the deciding official may reject the grievance.
- (3) The deciding official shall determine if the grievance falls within the coverage and time limits of this order and reject those that do not.
- (4) The deciding official shall establish an official grievance file for every grievance received. The file shall contain all documents related to the grievance, including the written grievance; statements of witnesses and parties to the grievance; copies of pertinent Agency records; the fact-finding report, if any, and the written decision. The deciding official will forward the completed grievance file to the servicing Human Resources officer for retention.
- (5) When the deciding official finds that the facts of the case are clear and are not disputed by either the employee or the management official involved, he/she will issue the final written decision on the case to the employee with a copy to the employee's representative no later than 20 CALENDAR DAYS after receipt of the written grievance. The deciding official will also send a copy of the decision to the management official(s) involved.
- (6) If the deciding official finds that the facts of the case are not clear or the employee and the management official(s) involved do not agree on the facts, he/she shall initiate the fact-finding process described below within

the 20 DAY time limit.

c. Fact-Finding.

(1) Fact-finding is an inquiry of a nature and scope appropriate to ascertain the facts involved in the grievance. At the fact-finding official's discretion, the inquiry may consist of:

- (a) Requests for information;
- (b) The securing of documentary evidence;
- (c) Personal or telephone interviews;
- (d) A hearing; or
- (e) Any combination of (a) through (d) above.

(2) Deciding officials may:

- (a) Conduct the fact-finding themselves; or
- (b) Designate a fact-finding official who has not been involved in any aspect of the grievance and does not occupy a position subordinate to any official who recommended, advised on, made a decision on, was consulted on, or was otherwise involved in the case; or
- (c) Contract for the services of a fact-finder. The deciding official shall transfer the grievance file to the fact-finding official if appropriate, for the duration of the inquiry.

(3) The fact-finding official shall:

- (a) Investigate the circumstances pertinent to the grievance;
- (b) Give the parties to the dispute opportunity to present their respective positions; and
- (c) Prepare a report of findings.

d. Review of Grievance File. After the fact-finding official has completed the inquiry, he/she will notify the employee the employee's representative where they may review the grievance file.

The fact-finding official shall establish reasonable times and place for review of the

file. The fact-finding official will incorporate any comments from the employee or the employee's representative into the grievance file and provide copies of any documents in the grievance file requested by the employee.

- e. Report of Findings. After the employee and his/her representative have been given an opportunity to review and comment on the grievance file, the fact-finding official shall prepare a report of findings. If someone other than the deciding official conducted the fact-finding, he or she shall submit a report of findings, along with the grievance file to the deciding official. The fact-finding official shall complete the report of findings within 30 CALENDAR DAYS after the onset of fact-finding.
- f. Written Decision. The deciding official will issue a written decision to the employee within 100 CALENDAR DAYS of initiation of the informal grievance procedure. The decision must be based on the facts of the case. If fact-finding has occurred, the deciding official will base the decision on the report of findings and other evidence or documents contained in the grievance file. The written decision must include the report of findings, if fact-finding occurred, and the reasons for the deciding official's determination on the issues of the grievance.

The deciding official will send copies of the decision letter and report of findings to the employee's representative and to the management official(s) involved, if any.

10. GRIEVANCE FILE. The deciding official and the servicing Human Resources officer are responsible for custody of the grievance file in accordance with the standards prescribed at 5 C.F.R. Part 293. Grievance records are also subject to the regulations implementing the Privacy Act found in 5 C.F.R. Part 297, and the deciding official and servicing Human Resources Officer must also apply these regulations to the grievance files in their custody. The Human Resources Officer will respond to Freedom of Information Act requests concerning grievance records in accordance with the Freedom of Information Act.
11. FUNDING. Costs arising from a formal grievance, including the services of a fact-finding official; the transcription, if any, of a hearing; and transportation and per them of witnesses will be charged to the appropriation of the organization in which the grieving employee works. Reimbursement for witnesses will be paid only if the fact-finding official determines that the testimony of the witness is necessary for a proper disposition of the case and that an affidavit from the witness would not adequately accomplish the same objectives.