

CHAPTER 2. INITIAL GRIEVANCE PROCEDURES

2-1. To Whom Initial Grievance is Presented.

A. To Immediate Supervisor In Most Cases. It is desired and encouraged that the Initial Grievance be resolved at the lowest practical management level. An employee with a grievance shall present the Initial Grievance to his/her immediate supervisor, who is designated as the Initial Grievance Officer. The employee shall present the grievance in writing and shall provide a copy to the servicing Human Resources office.

B. Merit Staffing Exception. An employee with a grievance concerning a merit staffing action shall present the Initial Grievance to the servicing Human Resources office, but not the human resources specialist directly involved in the action. The servicing Human Resources Director is responsible for the initial merit staffing action.

C. Exception for Grievants Who Have Been Suspended. An employee who has been suspended for fourteen (14) calendar days or less is entitled to only the Final Grievance procedure. The grievance shall be presented to a management official one administrative level higher than the individual who issued the decision notice on the suspension. The Final Grievance shall be presented to the Final Grievance Officer within fourteen (14) calendar days of receipt of the suspension decision notice.

D. Exception for Grievants Who Have Been Reprimanded. An Official Reprimand sometimes includes an opportunity for the recipient to reply. In such cases the employee will be entitled to only the Final Grievance procedure. The grievance will be filed with a management official one administrative level higher than the individual who issued the Official Reprimand. In this situation the Final Grievance shall be presented to the Final Grievance Officer within fourteen (14) calendar days of receipt of the Official Reprimand. If the employee was not given the opportunity to reply to the Official Reprimand, he/she shall be entitled to both the Initial and Final Grievance procedures, filing the Initial Grievance with the management official who issued the Official Reprimand.

E. Performance Evaluation Exception. An employee covered by this grievance procedure who wishes to file a grievance based upon a performance evaluation shall file the Initial Grievance with the official who served as the reviewing official in the evaluation process.

F. Other. When the matter/issue being grieved is not under the control of the immediate supervisor, the grievance should be filed with the management official at the lowest level that has authority to act on the matter being grieved.

2-2. Time Limit for Presenting Initial Grievance. An employee must present a grievance within fourteen (14) calendar days of the date of the act or occurrence being grieved or the date he/she became aware of that act or occurrence. An employee may present a grievance concerning a continuing practice or condition at anytime during the existence of the practice or condition being grieved.

2-3. Content of Initial Grievance. An Initial Grievance must:

- A. Be in writing (a copy must be provided to the servicing Human Resources office);
- B. Contain the grievant's name, grade, title, and duty station;
- C. Contain the name and address of the grievant's representative, if any;
- D. Contain sufficient detail to identify and clarify the issues of the grievance, including the date of alleged incident(s); and
- E. Specify the personal relief requested by the grievant. A request for disciplinary action affecting an agency official or another employee is excluded as an acceptable personal relief under this Handbook.

2-4. Review of Initial Grievance.

A. The Initial Grievance Officer, in consultation with the servicing Human Resources office, and in consideration with the requirements of paragraph 10. shall:

- 1. Determine whether to accept, reject, or remand all or part of the grievance. These determinations are explained in paragraphs 2-4.B. and C.;
- 2. Determine if the grievance meets the requirements of paragraph 1-10.;
- 3. Determine which issues, if any, will be investigated if the grievance is accepted;
- 4. Determine whether to allow grievant's choice of representative;
- 5. Give fair and objective consideration to the grievance; and
- 6. Determine what method(s) to use to resolve the grievance (e.g., Fact Finder).

B. If the issues of the grievance or the relief sought are not clearly described in the grievance, the Initial Grievance Officer may remand the grievance to the grievant for clarification of the issues/matter or additional information before proceeding.

C. The Initial Grievance Officer may reject the Initial Grievance for good cause, including, but not limited to, the following reasons:

- 1. The employee is not covered under paragraph 1-2. or the subject of the grievance is excluded from coverage under paragraph 1-8.B.;
- 2. The grievance is untimely filed; or
- 3. The remedy requested is not personal to the grievant or is not subject to the control of the Department.

D. Before rejecting the grievance, the Initial Grievance Officer shall obtain the concurrence of the servicing Human Resources office (except in merit staffing grievances, where there is no need for such concurrence).

E. Rejection of the grievance shall be in writing and signed by the Initial Grievance Officer.

The Initial Grievance Officer must receive concurrence from the servicing Human Resources office prior to rejecting the Initial Grievance. The rejection notice will identify to whom the grievant may file a Final Grievance. This written notice to the employee will, in effect, establish a grievance file that will be in the custody of the servicing Human Resources office.

F. If the grievance is accepted, the Initial Grievance Officer shall review the relevant issues and merits of the case, in consultation with the servicing Human Resources office.

2-5. Action by Initial Grievance Officer. The Initial Grievance Officer shall make every effort to resolve the grievance in a manner acceptable to the grievant. In doing so, the Initial Grievance Officer shall proceed as follows upon receiving the Initial Grievance:

A. Review the Initial Grievance to establish that it contains the information required in paragraph 2-3. above and identify the issues being grieved;

B. Accept or reject the grievance, or remand the grievance to the grievant for additional information;

C. Fully and impartially consider all the facts and relevant issues of the grievance;

D. Take into consideration the grievant's viewpoint, the viewpoints of others concerned, and the interests of the Department. Consideration may include, as necessary, communication with any or all persons concerned as well as with any other appropriate official;

E. Based upon a review of the record, resolve the grievance in a manner acceptable to the grievant, if possible within law, regulation, and departmental policy;

F. Appoint a Fact Finder if it is necessary to get clarification on issues being grieved;

G. Furnish the grievant and the servicing Human Resources office a timely Report of Disposition as described below. The adjustment or report must be made no later than twenty-one (21) calendar days after receipt of the Initial Grievance; and

H. If the Initial Grievance Officer cannot make a decision on the grievance in a timely manner, the Initial Grievance Officer shall obtain the approval of the Final Grievance Officer and the concurrence of the servicing Human Resources office for an extension. If an extension is approved, the Initial Grievance Officer will notify the grievant, in writing, of the need for additional time and provide a new response date. (See 1-15.A.)

2-6. Fact Finding Procedures.

A. If the Initial Grievance Officer makes a determination that fact-finding is necessary to obtain supplemental information, he/she may appoint a Fact Finder to complete the inquiry and prepare a fact-finding report for inclusion in the grievance file. Additionally, the Initial Grievance Officer may request that the Fact Finder include recommendations in the report.

B. The Fact Finder must be an individual who has not been involved in the matter being grieved and who does not occupy a position subordinate to any involved official.

C. If circumstances warrant an extension of the twenty-one (21) calendar day time limit for completing fact-finding, the Fact Finder shall submit a written request for an extension to the Final Grievance Officer. If the extension is approved, the Fact Finder shall notify the interested parties.

2-7. Assignment/Authority of Fact Finders. The Fact Finder is appointed in writing by the Initial Grievance Officer. The appointment document is the Fact Finder's authority for interviewing witnesses, obtaining documentary evidence, and receiving advice and assistance from subject matter experts. When obtaining documents/information subject to the Privacy Act, the Fact Finder must take necessary precautions to prevent improper disclosure of information.

2-8. Responsibility for Fact Finder Process Expenses. The grievant's servicing Human Resources office shall coordinate arrangements with respect to payment of expenses, if any. These costs are the responsibility of the program office in which the grievant is employed, except when Merit Staffing grievances are filed across organizational lines. In those instances, the office in which the merit staffed position is located will be responsible for payment of incurred expenses that include: travel, per diem, court reporter, etc.

2-9. Grievance Issues To Be Examined By Fact Finder.

A. Usually, the Initial Grievance Officer will specify clearly, in writing, the issues in a grievance that are accepted, rejected, and/or remanded. If the grievance is remanded to the grievant for additional information or clarification of an issue or matter, the Fact Finder will examine only those issues that are specified and accepted for grievance processing. The Fact Finder may narrow/define the scope of the issues contained in the grievance acceptance letter when the Initial Grievance Officer has not done so or has not specified them clearly enough. The Fact Finder may contact the grievant for information when a better understanding or a narrower scope of the issues is needed. However, in no case is the grievant permitted to expand the scope of the issues or introduce new ones.

B. The Fact Finder should strive to focus only on relevant and material information. The Fact Finder should avoid dealing with extraneous factual matters which, if proven, would not affect the grievance decision.

2-10. Types of Fact Finding Inquiries. The Fact Finder is responsible for conducting an inquiry of a nature and scope that is appropriate to the issues involved in the grievance. The facts should be presented through evidence. The inquiry may include any one or a combination of the following methods:

- A. Securing documentary evidence;
- B. Conducting personal interviews; and
- C. Group meetings, if deemed necessary.

2-11. Fact Finding Evidence. The fact finding should focus on the following:

A. Best Evidence Rule. To prove the contents of a writing (or a recording or photograph), a party must produce the original writing unless it is unavailable, in which case secondary evidence { such as copies, notes, or testimony { may be admitted;

B. Circumstantial Evidence. Evidence related to circumstance/fact which, either alone or in connection with other facts/circumstances, enables one to reasonably infer the existence or non-existence of another fact at issue;

C. Direct Evidence. Evidence that tends to directly prove or disprove a fact at issue is called direct evidence. An example would be eyewitness accounts;

D. Hearsay Evidence. Testifying to something that was not directly seen, heard, or otherwise sensed, and that one became knowledgeable of from someone or something else constitutes hearsay. Hearsay does not prove the truth or falsity of something. It may only prove that a statement was made, but it does not prove the truth of the statement's content. However, affidavits, letters, memoranda, etc., are types of hearsay that may be included, especially when the originator's comments as to their validity/accuracy are included. Official Government records, business records and the like are accepted into evidence even when they may consist all or in part, of hearsay statements;

E. Immaterial Matters. Matters that are relatively unimportant to the issues should not be included. They may unfairly give the appearance of increased gravity when they are prejudicial to the grievant;

F. Irrelevant Matters. Matters that do not have a bearing on the issues should not be included. Fairness is compromised when evidence is admitted that is prejudicial to the grievant and is not relevant to the issues. Such evidence may influence the Initial Grievance decision even though it is irrelevant to the matters at issue;

G. Opinion Evidence. Any conclusions, opinions, or judgments rendered by the witness are opinion evidence. Its value depends on the competence of the witness to render it and his/her ability to support the conclusions/opinions/judgments with the specifics that serve as the basis for the conclusions/opinions/judgments;

H. Privileged Evidence. Certain types of evidence, although clearly relevant, may have to be excluded from the report for policy reasons. Examples are national security, classified material, names of Government informants, and communications between an employee and his/her representative. A grievance file is an open record - open to review by the grievant and his/her representative and by an administrative forum or court that may have jurisdiction over the matter; and

I. Repetitiousness. Although all evidence that is to be considered must be made a part of the grievance file, unduly repetitious evidence is not needed to prove a point. Evidence is unduly repetitious when it duplicates evidence that already conclusively proves the point.

2-12. Fact Finder's Evaluation of the Evidence.

A. The Fact Finder must review all facts obtained and make a finding on each of the issues referred by the Initial Grievance Officer. In administrative grievance proceedings, the issues must be proven by a preponderance of the evidence, except in grievances concerning performance appraisal ratings which requires proof of substantial evidence, i.e., a lesser standard necessary to support the assigned element and summary ratings.

B. In considering and evaluating evidence, the Fact Finder should keep in mind any extenuating circumstances and the various kinds of evidence. There is no general rule for contrasting the weight of circumstantial and direct evidence. The weight given will depend on the particular case. Hearsay evidence must also be evaluated. However, the circumstances under which hearsay statements were made must be carefully considered before determining whether to consider such material. If, after due consideration, the Fact Finder is convinced by the grievance file that it is more probable than not that the issues raised are true, his/her findings should sustain the reasons.

2-13. Fact FinderFs Report. The Initial Grievance Officer will consider the fact-finding report in reaching an appropriate decision.

A. The written report shall contain:

1. A brief summary of the case, including a listing of the issues;
2. An analysis and finding on procedural issues, if appropriate;
3. An analysis of material evidence relating to each issue;
4. A finding on each issue;
5. A chronology of the Fact FinderFs activities; and
6. Recommendations based on the findings, if requested by the Initial Grievance Officer.

B. Findings must be based solely on conclusions believed to be true. The fact-finding analysis should show the reasoning by which the Fact Finder arrived at the findings. The findings should be clear and concise. In determining recommendations, the Fact Finder must make a considered judgment based on sustained reasons and specifications. If one or more of a series of reasons or specifications are not sustained, the relief requested is not automatically denied, but the recommendation must be based on the relative importance of those reasons sustained to the circumstances of the case.

C. Appendix 1 is provided as guidance for preparing a Fact FinderFs report.

2-14. Fact Finder File to Grievant and Initial Grievance Officer for Review and Comment.

A. The Fact Finder shall complete fact-finding and write a draft report within twenty-one (21) calendar days from the date of receipt of the grievance file, unless the Final Grievance Officer approves an extension.

B. On completion of the fact-finding inquiry process, the Fact Finder shall make the grievance file and the written draft report available for seven (7) calendar days to the grievant, grievantFs representative, and Initial Grievance Officer for review and comment. Any comments received shall be included in the grievance file.

C. The grievant, grievant's representative, and Initial Grievance Officer are to provide their comments to the Fact Finder in writing within seven (7) calendar days of receipt of draft report. Their comments shall be included in the grievance file.

D. The Fact Finder shall ensure that the grievance file contains all documents related to the grievance. The documents include, but are not limited to, notes, records, and copies of witness statements.

2-15. Findings and Recommendations of Fact Finder.

A. After all parties have been given an opportunity to review the grievance file, the Fact Finder shall prepare a final report and shall submit that report along with the grievance file to the Initial Grievance Officer within fourteen (14) calendar days.

B.

The Fact Finder shall furnish a copy of the report to all appropriately interested parties including the Director, Labor and Employee Relations Division, in Headquarters, or the servicing Human Resources Division in the Field.

2-16. Initial Grievance Decision.

A. Upon receiving the written report of findings and recommendations, if any, and the grievance file from the Fact Finder, the Initial Grievance Officer shall review the report and issue the decision on the grievance within fourteen (14) calendar days.

B. If the Initial Grievance Officer determines that the Fact Finder's recommendations are unacceptable and should be rejected, he/she must obtain the concurrence of a management official at a higher level than the Formal Grievance Officer.

C. The Initial Grievance Officer's Report of Disposition shall describe, at a minimum, the following:

1. A statement of the issue(s) being grieved and the requested remedies;
2. The consideration given it;
3. Identification of any proposed settlement offers and their disposition;
4. Report of information collected relevant to the grievance with applicable findings or conclusions;
5. Actions taken to achieve a solution to the Initial Grievance and results;
6. A clear decision which addresses the basis for the decision; and
7. The grievant's right to file a Final Grievance within seven (7) calendar days and identify the Final Grievance Officer.

D. The decision must receive concurrence by the servicing Human Resources office before it is issued.

2-17. Distribution of Initial Decision. Copies of the decision on an Initial Grievance shall be transmitted by the Initial Grievance Officer to the following persons:

- A. The grievant (and representative, if any);
- B. The management representative, if any; and
- C. The grievant's servicing Human Resources office.

2-18. Untimely Response. The grievant may advance the grievance to the Final Grievance stage if the Initial Grievance Officer either fails to issue a decision within twenty-one (21) calendar days of receipt of the Initial Grievance or fails to inform the grievant of a delayed decision (1-12.F.).

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