



UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES



SUBJECT: Employee Grievances

SEP 18 2009

Instruction 1008

(CHR)

ABSTRACT

This Instruction outlines the Administrative Grievance System (AGS) procedures for handling and processing employee grievances.

A. Purpose. This Instruction reissues USUHS Instruction 1008^a and sets forth the AGS procedures for administering employee grievances in accordance with the requirements of 5 CFR, Part 771, DoD Civilian Personnel Manual (CPM) 1400.25M, Subchapter (SC) 771, and 5 USC, Section 2105.

B. References. See *Enclosure 1*.

C. Applicability.

1. This Instruction is applicable to all billeted General Schedule (GS), Federal Wage System (FWS), and Administratively Determined (AD) civilian employees of USUHS and the Armed Forces Radiobiology Research Institute (AFRRI). AD employment issues not covered under USUHS Instruction 1205, "Faculty Grievances," may be subject to review under this Instruction. It also covers former agency employees with respect to matters that occurred during their employment with USUHS or AFRRI, provided a remedy is available that is consistent with applicable laws and regulations.

2. This Instruction does not cover the following:

(1) An applicant for employment who is not a present or former USUHS or AFRRI employee for whom a remedy can be provided.

(2) Employees eligible for transfer, or former employees eligible for reinstatement, who have applied for positions under a merit promotion program.

(3) Non-appropriated fund (NAF) employees.

D. Definitions. See *Enclosure 2*.

E. Policy.

1. Grievances may be presented by agency employees to resolve any concern or dissatisfaction regarding employment issues (except those excluded by section F of this Instruction), which are subject to the control of agency management. Prompt, impartial, and equitable consideration will be given to all grievances. Employee grievances will be resolved at the lowest possible supervisory level, after being made known to the

employee's supervisor or designated deciding official.

2. Employees and their representatives, if any, will be unimpeded and free from restraint, coercion, discrimination or reprisal in filing a grievance.

3. Alternative Dispute Resolution (ADR) techniques may be used as an alternative to formal administrative grievance procedures. ADR techniques include a broad range of approaches for resolving disputes. These techniques include, but are not limited to: problem solving; mediation; facilitation; early-neutral evaluation; fact-finding ombudsmen; and, peer review.

F. Scope.

Any employment matter may be grieved under this Instruction except for the following:

a. Any matter subject to formal review or adjudication by the Merit Systems Protection Board (MSPB); the Office of Personnel Management (OPM); the Federal Labor Relations Authority (FLRA); the Equal Employment Opportunity Commission (EEOC); the Office of Special Counsel (OSC); or, any matter that an employee files under another review or consideration procedure, or dispute resolution process within the DoD. These matters include, but are not limited to:

(1) Charges involving allegations of discrimination because of race, color, sex, religion, age, handicapping condition, political affiliation, marital status, or national origin.

(2) Adverse actions (removals, suspensions of more than 14 days, reduction in grade or pay, or furlough).

(3) Reduction-In-Force actions.

(4) Position classification decisions and any resulting actions that are covered by an administrative appeals system outside of the agency.

(5) Actions directed by OPM or OSC.

b. The content of published regulations and policies.

c. Determinations concerning academic promotions and/or tenure covered by USUHS Instruction 1100 "Policies and Procedures for Appointments" (see USUHS Instruction 1205).

d. Non-selection for promotion from a group of properly ranked and certified candidates, or failure to receive noncompetitive promotion.

e. A preliminary notice of an action that, if effected, would be covered under this Instruction or excluded from coverage under "a." above.

f. The substance of an employee's performance elements, standards, or work objectives.

g. Determinations concerning any awards or incentive bonuses, additional step increases, merit increases, recruitment or relocation bonuses, retention allowances, physician comparability or additional pay allowances, supervisory differentials, critical position pay, or dual compensation waivers.

h. Any action taken under a voluntary, formal agreement entered into by an employee involving geographic relocation or return from an overseas assignment.

i. Terminations or separations of employees during probationary or trial periods.

j. The return of an employee serving a supervisory or managerial probationary period to a non-supervisory/non-managerial position for failure to satisfactorily complete the probationary period.

k. Expiration or termination of a time-limited excepted appointment, a term or temporary appointment or temporary promotion, or a Senior Executive Service (SES) limited emergency or limited term appointment, on the date specified as a condition of employment at the time the appointment or promotion was made.

l. Termination of a temporary or term promotion at a time other than the date specified in the initial appointment, provided that the employee was informed in advance of the temporary nature of the appointment or promotion and the employee was returned to his/her former position from which temporarily

promoted or a different position of equivalent grade and pay.

m. For SES employees, performance evaluations and awards (including meritorious or distinguished executive rank awards), reassignment following receipt of an unsatisfactory rating, return to another pay system during the 1-year period of probation or for less than fully successful executive performance, or failure to be recertified, conditional recertification, or termination during probation for unacceptable performance.

n. SES or Senior Level pay rate changes.

o. Any termination or separation action.

p. Oral admonishments or letters of counseling or caution.

G. Effective date. This Instruction is effective immediately.



Charles L. Rice, M.D.
President

Enclosures:

1. References
2. Definitions
3. Responsibilities and Grievance Procedures
4. Chart - USUHS Administrative Grievance System (AGS)

REFERENCES

- a. USUHS Instruction 1008, "Employee Grievances," 21 July, 2004 (hereby canceled)
- b. Title 5, Code of Federal Regulation (CFR), Part 771, "Administrative Grievance System"
- c. DoD Civilian Personnel Manual 1400.25M, Subchapter 771 "Administrative Grievance System (AGS)," December 1996
- d. Section 2105 of Title 5, United States Code (USC)

DEFINITIONS

A. **EMPLOYEE.** - Individuals as defined in 5 V.S.C. 2105 (Reference "d."). It also includes former agency employees with respect to matters that occurred during their employment with USVHS or AFRRI, provided a remedy is available that is consistent with applicable law and regulation.

B. **PERSONAL REMEDY/RELIEF** - A specific remedy that directly benefits the grievant(s). A remedy may not include a request for disciplinary or other action affecting another employee. Failure to specify the personal relief being sought in a grievance may be grounds for rejection of a grievance.

C. **GRIEVANCE EXAMINER** - A person assigned to conduct an inquiry concerning a grievance and provide his/her findings and recommendations on the grievance issue(s). The grievance examiner must be a person who was not involved in the matter being grieved, and who does not occupy a position subordinate to any official who recommended, advised, made a decision on, or otherwise was involved in the matter being grieved.

D. **GRIEVANCE FILE** - A separate file containing all documents related to the grievance, including, but not limited to, any statements of witnesses, records or copies thereof, the report of the hearing when one is held, statements made to the parties to the grievance, and the decision.

E. **EMPLOYEE REPRESENTATIVE** - A person designated by the grievant who is willing to serve as a representative to the grievant at any stage in the grievance process.

F. **DECIDING OFFICIAL** - The designated official who issues a decision on a formal grievance. The deciding official must be assigned to a higher level than any employee involved in the grievance or having a direct interest in the matter being grieved unless the deciding official is the head of the DoD Component, installation, or activity.

G. **ALTERNATIVE DISPUTE RESOLUTION (ADR)** - Informal, non-adversarial techniques for settling employee-management disagreements. These techniques emphasize problem-solving as a means of dealing with disputes and seeking solutions agreeable to all parties. ADR techniques include, but are not limited to, problem solving, mediation, facilitation, conciliation, fact-finding, and peer review.

RESPONSIBILITIES AND GRIEVANCE PROCEDURES

A. RESPONSIBILITIES.

1. The President, USUHS: Ensures that the agency AGS is administered and implemented in accordance with applicable policies and regulations.

2. Supervisors:

a. Accept, review, and attempt to resolve informal grievances within the specified time limits.

b. Record the dates the informal grievance process begins and ends.

c. Notify the employee within the prescribed time limits of the decision concerning the informal grievance and the employee's right to request further consideration if the decision is not acceptable.

3. Deciding Officials:

a. Determine whether to accept, suspend, or reject all or a portion of the formal grievance.

b. Consider and attempt to resolve formal grievances of employees.

c. Notifies the employee, in writing, within the prescribed time limits, of the decision and proposed resolution(s) and the employee's right to request further review by a grievance examiner if the decision is not acceptable.

4. Employees:

a. Employees must present informal or formal grievances to their supervisor or the designated deciding official within the prescribed time limits. Each grievance must provide a clear statement of the issues and indicate the specific, personal remedy the employee is seeking.

b. Become familiar with the agency AGS and comply with the grievance procedures of this Instruction.

5. Civilian Human Resources Directorate (CHR):

a. Provide guidance, advice, and assistance to management officials and employees in the timely and equitable presentation and resolution of grievances.

b. Provide guidance, advice, and necessary assistance on Alternate Dispute Resolution (ADR) processes.

c. Obtain grievance examiners, as requested, to review grievances.

d. Maintain a grievance file for each written grievance filed under the AGS for a period of 4 years after the case is closed. The file shall contain all documents or copies of documents related to the grievance.

e. Track the ADR processes used, including the number, the success rate, and any barriers observed to the use of the ADR processes.

B. GRIEVANCE PROCEDURES.

Employees may present grievances informally or formally concerning employment issues not excluded by section F of this Instruction. Grievances must be presented within 15 days after the act or event, or within 15 days after the date the employee became aware (or reasonably should have become aware of) the act or event. An employee may present a grievance concerning a continuing employment practice or condition at any time.

1. Employee Rights.

a. In presenting a formal grievance, an employee has the right to be accompanied, represented, or advised

by a personal representative. The employee must notify the Director, CHR, or his designee, in writing, within 5 days after presenting a formal grievance, of his/her choice of representative, if any. The employee must provide prompt (within 3 days) written notice of any subsequent change of any representative to the Director, CHR. The agency may disallow an employee's choice of representative, which would result in a conflict or apparent conflict of interest or position, a conflict with the priority needs of the agency, or would result in unreasonable cost to the Government. An employee may challenge the agency's decision to disallow his/her choice of representative to the appropriate Dean, School of Medicine (SOM) or Graduate School of Nursing (GSN), or Vice President, USUHS, or their designees, and obtain a decision before proceeding with the grievance. The challenge must be initiated within 5 days of the denial.

b. The employee and his/her representative(s) will be free from restraint, interference, coercion, discrimination or reprisal in presenting a grievance.

c. An employee will be granted a reasonable amount of official time (normally up to 2 hours), if otherwise in a duty status, to present a grievance and/or to communicate with management and human resource officials. The employee and his/her supervisor should arrive at a mutual understanding as to the amount of official time to be used prior to the employee's use of the time. An employee may also be granted, as determined by the employee's supervisor, a reasonable amount of official time to prepare a grievance (normally up to 2 hours). Government resources, such as typing

assistance, reproduction, word processing, and facsimile equipment may be used by an employee to prepare a grievance.

d. The employee and his/her representative(s) shall have access to relevant information concerning the grievance and shall be given copies of such information unless to do so would be unduly burdensome or contrary to law or regulation.

2. Cancellation/Termination of a Grievance. A supervisor or deciding official can cancel, suspend, or terminate an informal or formal grievance, or a portion of a grievance for the following:

a. The matter is not covered by the administrative grievance procedure.

b. The remedy included a request for disciplinary or other action affecting another employee.

c. The employee grieved the same matter raised in another forum. An employee may not grieve the same matter raised in any other (previous or ongoing) grievance, appeal, complaint, or other dispute resolution process under this procedure.

3. Time Limits. When calculating time limits under the grievance procedures, the day of an action or the date the grievance or decision is received is not counted. The last day of the time limit is counted unless it is a Saturday, a Sunday, a legal holiday, or a day on which the employee is not regularly scheduled to work. In such cases, the last day will be the next regularly scheduled workday. All time limits are counted in calendar days.

4. Processing Grievances. ADR are techniques that may be used throughout

the grievance process (where practical) in the resolution of grievance disputes.

5. Attorney Fees. There are no provisions for payment of attorney fees or other expenses associated with filing a grievance to an employee or his/her representative(s) under the AGS.

C. INFORMAL GRIEVANCE/ PROBLEM SOLVING PROCEDURE.

1. Presenting the Grievance.

a. An employee may present a grievance verbally or in writing for informal consideration concerning a work-related concern or problem to his/her immediate supervisor before filing a formal grievance. If the issue involves a matter directly involving that supervisor, the employee may present it to the next level supervisor.

b. The employee must present the informal grievance within 15 days following the date of the act or event, or within 15 days after the date the employee became aware (or reasonably should have become aware of) the act or event.

2. Consideration.

a. The supervisor who receives the informal grievance will discuss the issue(s) with the employee and attempt to resolve the grievance within 15 days from the date the grievance was brought to his/her attention. The 15-day time limit may be extended provided there is mutual agreement, in writing, between the parties to extend the time limit to accommodate resolution of the grievance.

b. If the employee presents the grievance verbally, the supervisor's determination may be oral or written. When a determination is communicated verbally, the supervisor will prepare a

memorandum documenting the matter and provide a copy to the employee. If the grievance is presented in writing, the determination must be in writing. If the supervisor believes the matter is not covered by the administrative grievance procedure, the supervisor should consult with the CHR, and so inform the employee and advise the employee of the appropriate process, if any, for resolving the problem.

c. The supervisor will notify the employee of his/her decision (within the 15-day time limit or agreed upon time limit). The deciding official will also inform the employee that, if the employee is not satisfied with the solution, the employee may present a formal grievance within 15 days from the date of receiving the decision.

D. FORMAL GRIEVANCE PROCEDURE.

1. Processing a Formal Grievance.

a. An employee may file a formal, written grievance through the Director, CHR, or his/her designee, to the designated deciding official if a resolution is not reached during the informal grievance/problem-solving process, or if the employee chooses to bypass that process and invoke the formal administrative grievance process. If the employee utilized the informal grievance/problem solving procedure, the employee must file a formal grievance no later than 15 days from the conclusion of that process. When the employee elects to initially file a formal grievance, the employee must present the formal grievance, in writing, within 15 days after the date of the act or event, or within 15 days after the date the employee becomes aware (or reasonably should become aware of) the act or event.

b. Acceptance, Suspension, or Rejection of the Grievance. If a grievance fails to meet the requirements described in this Instruction, or is not properly presented, the CHR will, as appropriate, recommend to the deciding official (within seven (7) days of receiving the grievance) that he/she should:

(1) Return it to the employee for correction and resubmission within a specified time limit of not more than seven (7) days.

(2) Reject it as untimely.

(3) Reject it as an inappropriate matter for consideration under this Instruction.

c. The grievance must include:

(1) Name and telephone number of the employee (and the name and telephone number of the employee's representative, if any), and must be signed and dated.

(2) Position Title and Grade.

(3) The department to which the employee is assigned.

(4) Any documents or information regarding the grievance including sufficient details to identify and clarify the basis for the grievance (times, dates, names, places, and other pertinent data).

(5) A statement of the specific, personal remedy requested by the employee. The remedy must be personal to the employee and may not include a request for disciplinary or other action affecting another employee.

(6) A statement that the employee has not raised the same issue(s) in any other grievance, appeal, complaint, or other dispute resolution process.

d. The Deciding Official will:

(1) Fully and carefully consider the grievance and attempt to resolve it as

soon as possible, but within 15 days of the date the grievance is received. The deciding official may extend the 15-day time limit (but not later than 30 days) when warranted by special circumstances (e.g., the individuals who were involved are geographically dispersed or on TDY, or when an outside fact-finder is used in the process) in order to accommodate the resolution of the grievance. The deciding official must notify the grievant, in writing, of any extension.

(2) Determine whether to join similar or identical grievances, or whether to conduct an investigation and the nature of how it will be conducted. The deciding official may designate an individual to review or investigate a grievance and, when authorized, to make recommendations concerning its disposition. The individual must not have been involved in the grievance or the matter being grieved or occupy a position within the supervisory chain subordinate to the deciding official involved in the matter, unless the deciding official is the President, USUHS.

(3) Notify the employee in writing (within the 15-day time limit or extended time limit) of his/her decision, including the rationale for the decision, and the action to be taken, if any. Advise the employee in the decision notice that if the decision of the grievance is not satisfactory, the employee must notify the deciding official of this fact within five (5) days before a grievance will be forwarded to a grievance examiner for further review or the grievance will be closed.

(4) Forward the grievance and pertinent correspondence to the CHR when timely notification is received from the employee.

e. Assignment of Grievance Examiner. The Director, CHR, or his/her designee, will assign a properly selected and trained examiner to review the grievance.

f. Examiner's Inquiry and Report. The examiner will conduct an inquiry into the grievance, complete the grievance file and submit the report to the deciding official within thirty (30) calendar days of the grievance's assignment to the examiner.

(1) Scope of Inquiry. The Examiner will conduct an inquiry which, at the examiner's discretion, may consist of:

- (a) Securing documentary evidence.
- (b) Personal interviews.
- (c) A group meeting.
- (d) A hearing.
- (e) Any combination of the above.

(2) The Hearing. If a hearing is held, it will be conducted by the examiner in accordance with OPM Regulations to bring out pertinent facts and develop pertinent records.

(a) Attendance. The hearing is not open to the public or the press. Attendance will be limited to those persons determined by the examiner to have a direct connection with the grievance or the right to attend. The examiner may exclude any person from the hearing for conduct or misbehavior that obstructs the hearing.

(b) Hearing Procedure. Rules of evidence are not strictly followed during the hearing, but the examiner will rule out irrelevant or unduly repetitious testimony. The examiner will make decisions on the admissibility of evidence or testimony. Testimony will be given under oath or affirmation and the parties will be

provided an opportunity to cross-examine witnesses who appear and testify.

(c) Witnesses. Both parties are entitled to produce witnesses, provided they are in a duty status. They will be free from restraint, interference, coercion, discrimination, or reprisals resulting from their testimony.

1) Employees to whom this Instruction applies will normally be made available as witnesses when requested by the examiner. The CHR will arrange for the appearance of employee witnesses.

2) When the CHR determines that it is administratively impractical to comply with the examiner's request for the appearance of an employee's witness, the CHR will notify the examiner, in writing, of reasons for the determination. The examiner may postpone the hearing until the witness can appear if, in the examiner's judgment, the witness' appearance is essential to a full and fair hearing.

(d) Record of the Hearing. It shall be within the discretion of the examiner to determine how the hearing will be reported.

1) When a verbatim transcript is ordered, the CHR will make the necessary arrangements to accomplish such.

2) When the hearing is not reported verbatim, a suitable summary of pertinent portions of the testimony will be made by the examiner and submitted to both parties for acceptance or written comment.

a) If the examiner and the parties fail to agree on the summary, the parties are entitled to submit written exceptions to any part of the summary. Such exceptions must be received within

reasonable time limits set by the examiner.

b) Timely written exceptions and the summary will constitute the report of the hearing.

(e) The Grievance File. The examiner will establish a grievance file containing all documents related to the grievance, including statements of witnesses, records or copies thereof, and the report of the hearing if one is held. Upon completion of the inquiry, the examiner will make the grievance file available to the employee and the employee's representative for review and comment. Written comments received within a reasonable time limit as set by the examiner will be incorporated in the file.

(f) Examiner's Report. The examiner will prepare a report of findings and recommendations and submit it, with the grievance file, to the deciding official. The examiner will furnish the employee and the employee's representative with one copy of the report.

2. Final Decision on the Grievance.

a. The deciding official, or his/her designee, will (within 15 days from the date the grievance examiner's report is received):

(1) Accept and direct the implementation of the examiner's recommendation (s), which is final and not subject to further review,

(2) Reject the examiner's recommendation(s) if the deciding official finds the recommendation(s) unacceptable, and forward the grievance file with a specific statement of the basis for that determination to the appropriate Dean, SOM or GSN, Vice President, or the President, USUHS, for a final decision.

b. The appropriate Dean, SOM or GSN, Vice President, or the President, USUHS, will make the final decision on the merits of the grievance within 15 days of receiving the grievance file. The decision will not be subject to further review.

c. The decision on a grievance processed under the formal procedures must be in writing and include a specific statement of findings on all issues covered in the examiner's inquiry. The notice will be sent to the employee with a copy to the employee's representative and one copy will be incorporated in the grievance file.

3. Records. The grievance file will be sent to the CHR and retained by that division, as provided by regulations.

USUHS AGENCY GRIEVANCE SYSTEM