



Department of
Human Resources
POLICY

Approved by: Rebecca R. Hunter, Commissioner	Policy Number: 12-005 (rev. 1/16)
Signature: <i>Rebecca R Hunter</i>	Supersedes: New
Application: All Preferred Service Employees and All Agency Appointing Authorities	Effective Date: October 3, 2012
Authority: T.C.A. § 4-3-1703, T.C.A. § 8-30-103, T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-108, T.C.A. § 8-30-318	Rule: Chapter 1120-11

Subject:

Appeals Procedure for Preferred Service Employees

Pursuant to Tenn. Code Ann. § 8-30-318, preferred service employees who have successfully completed the required probationary period may file an appeal regarding the application of a law, rule, or policy by an agency to the following employment actions: **dismissal, demotion, or suspension**. Executive service employees are at-will and are not eligible to participate in the appeal process.

Procedural Steps of Appeal

There are three (3) steps of the appeals process for preferred service employees. Appointing authorities are responsible for ensuring all preferred service employees are aware of the appeal process. Step I of the appeals process includes an informal discussion between the employee (“complainant”) and agency’s appointing authority. Step II of the appeals process includes a document review and decision by the Commissioner of the Department of Human Resources (“Commissioner”). Step III, the final step of the appeals process, is a hearing before the Board of Appeals.

Timeline for Filing a Complaint

At Step I of the appeals process, a complainant who desires to appeal an action based on an agency’s alleged violation of a specific law, rule, or policy with regard to complainant’s dismissal, demotion, or suspension, must complete a Step I appeal form. A completed appeal form, along with any relevant documentation, must be submitted to the appointing authority/designee no later than fourteen (14) calendar days after the date complainant received written notice of employment action. The completed form must identify the specific law, rule, or policy allegedly violated by the agency or department and describe the alleged violation of the policy. If complainant does not submit the completed form and relevant documentation in a timely manner, the complainant waives the right to appeal.

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If the complainant desires to proceed to Step II of the appeals process, the complainant has a maximum of fourteen (14) calendar days from the date of receipt of the appointing authority's written decision to complete and submit a Step II appeal form and relevant documentation. If, however, the appointing authority does not issue a written decision within fifteen (15) days after the appointing authority receives the complaint, the complainant may appeal to the Commissioner by filing a complaint in accordance with Step II.

To commence Step III of the appeals process, either the complainant or the agency may submit a completed Step III appeal form along with any relevant documentation within fourteen (14) calendar days of receipt of written decision by the Commissioner of Human Resources.

Step I

The first step of the appeals process commences once the complainant has timely submitted the Step I appeal form and any relevant documentation to the appointing authority. The appointing authority shall first determine whether the appeal has been filed timely and whether the matter is appealable. After review, the appointing authority shall set a date for a face-to-face discussion between the complainant and the employee's supervisor who issued the discipline. The date for the meeting shall be communicated in writing to the complainant no later than five (5) days after the receipt of the appeal. The appointing authority may also conduct any independent investigation relevant to the appeal if necessary prior to the meeting.

During the face-to-face discussion, the complainant must present information indicating the law, rule or policy allegedly violated by the agency in issuing the discipline. This discussion shall be informal. The presence of observers is at the discretion of the appointing authority. If necessary, the appointing authority may seek information from the observers, but such observers may not advocate on behalf of the agency or the employee.

The appointing authority shall issue a written decision to the complainant using their preferred method of communication (as designated on the Step I appeal form) no later than fifteen (15) calendar days after receipt of complainant's completed Step I appeal form. In reaching a decision, the appointing authority may consider information obtained as a result of the investigation, the documents presented during the Step I appeal, or during the Step I face-to-face discussion. The appointing authority may ultimately uphold the disciplinary action or may overturn, reduce, or amend the disciplinary action. When appropriate, the appointing authority may also reinstate leave and award back pay. If leave is reinstated or an award of back pay is granted, the agency must submit the award to the Department of Human Resources Technical Services Division for approval within three (3) days. If back pay is awarded, the agency shall issue payment no later than thirty (30) days from date of award. Any corrective action granted to the complainant cannot go back more than thirty (30) days prior to filing the Step I appeal.

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If the appointing authority does not issue a written decision fifteen (15) days after the appointing authority receives the complaint, the complainant may appeal to the Commissioner by filing a complaint in accordance with Step II. The complainant may also proceed to Step II when the complainant disagrees with the appointing authority's written decision.

The appointing authority may appoint a designee to serve as his or her representative throughout Step I of the appeal process. If such an appointment is made, the appointing authority shall inform the Department of Human Resources of the name of the designee(s) in writing.

Step II

The second step of the appeals process begins when a complainant submits a completed Step II appeal form to the Commissioner of the Department of Human Resources. The form is to be fully completed by the complainant. If the agency appointing authority issued a written decision, the appeal form, along with any relevant documentation, shall be submitted to the Commissioner no later than fourteen (14) calendar days after the date of the appointing authority's written decision.

Once the completed Step II appeal form and relevant documentation is received by the Commissioner, the Commissioner will complete an initial review within five (5) days to make a determination regarding timely submission of Step II information as well as review the specific law, rule, or policy allegedly violated by the agency. Upon completion of the initial review, the Commissioner will notify both complainant and agency whether the Step II form and documentation was timely submitted and whether complainant is able to proceed with an appeal. The notification will detail the timeframes for submitting additional documentation to the Commissioner.

After a thorough review of all relevant documentation provided from Step I and submitted by the complainant and the agency, the Commissioner will prepare a decision letter, which will be delivered to complainant and agency no later than thirty (30) days from the date the Commissioner received the completed Step II form and documentation. The decision letter will be issued to the complainant using their preferred method of communication (as designated on Step II appeal form). The decision letter will be sent to the agency's appointing authority as well as the general counsel of the agency by email. The decision shall include the Commissioner's determination as to whether the appointing authority's decision will stand, be overturned, reduced, or amended, and may also include reinstatement of leave or back pay if appropriate. Any corrective action granted may not go back more than thirty (30) days prior to complainant's submission of completed Step I appeal form.

Either the complainant or agency may appeal to the Board of Appeals if one of the following occurs: (1) DOHR does not timely issue a decision letter, (2) the complainant disagrees with the Commissioner's decision, or (3) the agency disagrees with Commissioner's decision.

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Step II of the appeals process is the final administrative step for a complainant appealing a suspension of less than three (3) days.

The Commissioner may appoint a designee to serve as his or her representative throughout Step II of the appeal process. If such an appointment is made, the Commissioner shall record the name of the designee(s) in writing.

Step III

The third and final step of the appeals process is initiated by submission of a completed Step III appeal form and all relevant documentation, including the Step II decision letter, to the Board of Appeals (sometimes "Board") no later than fourteen (14) days after the date the complainant or the agency receives the decision letter from the Commissioner. The form is to be fully completed by the complainant or complainant's representative, or the agency's appointing authority or agency representative acting on the appointing authority's behalf.

The Step III appeal form and relevant documentation shall be submitted to the Board of Appeals using the contact information below by one of the following methods: U.S. certified mail, hand-delivery, fax, or e-mail (scanned and submitted electronically).

Board of Appeals
First Floor, James K. Polk Building
505 Deaderick Street
Nashville, TN 37243
Fax: [\(615\) 401-6848](tel:6154016848)
E-mail: DOHR.Step3Appeals@tn.gov

The complainant will receive formal notification of the receipt of the Step III appeal by the preferred method of communication selected on the Step III appeal form. Agency notification will be made to both the appointing authority and general counsel of the agency by an email from the Board of Appeals administrator.

Upon receipt of the completed Step III form and relevant documentation by the administrator, a docket number will be assigned to the appeal and the appeal will be transferred to an Administrative Law Judge (ALJ) in the Administrative Procedures Division of the Secretary of State's Office. Notice of appearance on behalf of the agency shall be made to the ALJ within three (3) days of notification of receipt of the appeal by contacting the Administrative Procedures Division at (615) 741-7008. If notice is not timely made, the ALJ will communicate directly with the general counsel for the agency. The assigned ALJ will determine, within ten (10) days of assignment, if all procedural requirements for filing a Step III appeal were completed properly and in a timely manner. If not, the appeal will be dismissed by the ALJ and the

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complainant and agency will be notified by the method of communication selected on the Step III appeal form.

If all of the procedural requirements have been met, the Board of Appeals will proceed under the Uniform Administrative Procedures Act (UAPA), Title 4, Chapter 5 of the Tennessee Code Annotated, in making a determination whether the specific law, rule, or policy listed on the appeal form was violated. The Board shall issue its final decision no later than one hundred twenty (120) days from the date the Step III appeal form/relevant documentation was submitted to the Board. In order to ensure the Board meets this requirement, the following conditions shall be imposed on hearings before the Board:

1. Within twenty (20) days after the filing of the Step III appeal, the complainant and the agency will participate in a pre-hearing telephone conference with the assigned ALJ, at which time the hearing date will be set.
2. All motions, both dispositive (motions affecting the disposition or settlement of appeal) and non-dispositive (motions that do not affect the disposition or settlement of appeal), must be ruled on no later than thirty (30) days before the hearing date.
3. All discovery must be completed no later than sixty (60) days after filing the Step III appeal and relevant documentation with the Board.
4. Deadline extensions may be granted only in extraordinary circumstances as determined by either the Board or the ALJ. However, the granting of an extension does not affect the one hundred twenty (120) day time period for the Board of Appeals to issue its final decision.

Prior to the Board of Appeals hearing, the complainant and agency will be notified of the logistical details for the hearing as well as any pending due dates for submission of any additional documentation for review by the board members. The notification will be made to complainant and agency by the preferred method of communication selected on the Step III appeal form. An original and one (1) copy of the additional documentation for the Board of Appeals will be due to the administrator no later than ten (10) days prior to the hearing date. Oral argument is permitted before the Board of Appeals.

After the Step III hearing, the Board will issue a final order which may include, but is not limited to, upholding, overturning, reducing, or amending the Step II decision as well as reinstatement of leave, award of back pay and/or attorney's fees. A final order will be submitted to the complainant or his or her representative and the agency by the preferred method of communication selected on the Step III appeal form. Neither party shall be entitled to a petition for reconsideration under Tenn. Code Ann. § 4-5-317.

If the complainant is awarded back pay, reinstatement, or attorney's fees, the involved agency must comply with the final order within thirty (30) days from the date of the final order. If back pay is awarded, the reinstatement order shall specifically address back pay to the complainant and whether any offset of

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income earned from other employment or unemployment compensation claims will occur. If offset is to occur, the order shall include this information. If the complainant is reinstated to a position from which the employee was terminated, the complainant will be reinstated in the county where the complainant was working prior to termination, unless an exception is granted by the Commissioner. A complainant who successfully appeals dismissal for gross conduct and is reinstated must be credited with any annual leave used during the ten (10) calendar day paid notice and any annual leave forfeited to the state as a result of the dismissal. The annual time shall be charged as discretionary leave with pay, and the annual leave shall be added back to the employee's balance, along with any forfeited annual leave and any leave complainant would have accrued had they not been terminated. If attorney's fees are awarded by the Board of Appeals, the prevailing attorney shall submit required documentation (included in Section 1120-11-05 (3) of the Rules of the Department of Human Resources) to the board no later than thirty (30) days of the effective date of the final order.

The Step III hearing by the Board of Appeals is the final administrative step in the appeals procedure for preferred service employees. The Board's decisions, however, are subject to judicial review under UAPA, Title 4, Chapter 5.

Forms

The Appeal Forms for Steps I, II, and III may be obtained from the DOHR website: www.tn.gov/hr by clicking on the link "Policies and Resources" and then clicking on "Forms and Documents." After clicking on "Forms and Documents", click on the "Appeals" link where the appeal forms for Steps I, II, and III will be found. The agency is responsible for providing these forms to employees when computer access is not readily available. Employees may also contact the Board of Appeals administrator for assistance in obtaining any of the forms. An appeal may not be denied if it is not submitted on the form as long as the required components are included in the notice of appeal.

Questions regarding this policy may be directed to Director of Legal Services or the Board of Appeals Administrator within the Office of General Counsel.