

Approved by: Juan Williams, Commissioner	Policy Number: 12-005 (Rev. 07/2022)
Signature: 	Supersedes:
Application: All Preferred Service Employees and All Agency Appointing Authorities	Effective Date: October 2, 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, T.C.A. § 8-30-320	Rule: Chapter 1120-11

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 merits of the disciplinary action 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 (“Step I Appeal Discussion”) between the employee, the supervisor who issued the discipline, and the agency’s appointing authority or Step I Appeal Designee. After the Step I Appeal Discussion, a Step I Appeal Decision will be issued. Step II of the appeals process includes a review of all relevant documents and information (including, but not limited to, photos, video footage, social media posts, etc.) and a Step II Appeal Decision by the Commissioner of the Department of Human Resources (“Commissioner”). Step III, the final step of the appeals process, is an administrative hearing before the Board of Appeals.

For purposes of calculating days subject to this process, all days are considered calendar days (excluding State holidays), unless otherwise stated, pursuant with Tenn. Code Ann. §§ 8-30-407, 15-1-101. In addition, where a due date falls on a Saturday, Sunday, or State holiday, the appeal/decision is due by the end of next regular working day.

Timeline for Filing an Appeal

At Step I of the appeals process, an employee who desires to appeal a dismissal, demotion, or suspension must complete a Step I Appeal Form or otherwise notify the agency of their intent to appeal.

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Within the request to appeal, the employee must provide a statement detailing why the discipline issued was in error and should be overturned or reduced. A completed appeal form, or other written notification, along with any relevant documentation, must be submitted to the appointing authority/designee no later than fourteen (14) calendar days after the date employee received written notice of employment action, if hand delivered, or by the exercise of reasonable diligence should have become aware of the discipline giving rise to their appeal. If notice of the disciplinary action was sent via mail, three (3) days are added to the time frame. If an employee fails to file the appeal within fourteen (14) calendar days, then the right to appeal under this chapter lapses and is deemed to have been waived in its entirety by the employee.

If the employee desires to proceed to Step II of the appeals process, the employee has a maximum of fourteen (14) calendar days from the date of receipt of the appointing authority's Step I Appeal Decision, if hand-delivered, or three (3) additional days if mailed, to complete and submit a Step II Appeal Form or written notification and relevant documentation. If, however, the appointing authority does not issue a Step I Appeal Decision within twenty (20) calendar days after the appointing authority receives the appeal, the employee may appeal to the Commissioner by filing an appeal in accordance with Step II. In the event the appointing authority fails to issue a Step I Appeal Decision by the twenty (20) day timeframe, the fourteen-day period which an employee may appeal to Step II begins the day after the Step I Appeal Decision would otherwise be due.

To commence Step III of the appeals process, either the employee or the agency may submit a completed Step III Appeal Form or written notification along with any relevant documentation within fourteen (14) calendar days of receipt of a Step II Appeal Decision by the Commissioner of Human Resources, if hand-delivered, or three (3) additional days if mailed, to complete and submit a Step III Appeal Form or written notification and relevant documentation. If no Step II Appeal Decision is rendered in the allotted timeframe, the appealing party (either the agency or employee) must submit a Step III Appeal request within fourteen (14) calendar days after the Step II Appeal Decision would have otherwise been due.

Step I

The first step of the appeals process commences once the employee has timely submitted the Step I Appeal Form or written notification and any relevant documentation to the appointing authority. Additionally, within the request to appeal, the employee must provide a statement detailing why the discipline issued was in error and should be overturned or reduced. The appointing authority may appoint a Step I Appeal Designee to serve as his or her representative throughout Step I of the appeal process. The appointing authority or designee shall first determine whether the appeal has been filed timely, whether the matter is appealable, and whether the employee has complied with filing requirements (i.e., written statement). After review, the appointing authority or designee shall set a date for the Step I Appeal Discussion between the employee and the employee's supervisor (or other agency representative) who issued the discipline. The date for the Step I Appeal Discussion shall be

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communicated in writing to the employee no later than five (5) calendar days after the receipt of the appeal. The appointing authority or Step I Appeal Designee has discretion to reschedule the discussion upon either party's request. The appointing authority or Step I Appeal Designee shall provide to the employee, in advance of the discussion, a copy of any and all documents or other evidence in the appointing authority's possession that is relevant to the discussion, including, but not limited to, reports, videos, and recordings. If the information obtained is otherwise deemed confidential, the employee must be given an opportunity to view the information in person or via other approved methods (i.e., redaction, substantive summary, etc.) but may not receive a copy. The employee shall acknowledge in writing confirming they have been provided with said confidential information.

During the Step I Appeal Discussion, the employee has the opportunity to present any information to indicate why the discipline issued was in error. The employee must explain why the disciplinary action was in error and should be overturned or reduced. This Step I Appeal Discussion shall be informal. The presence of observers is at the discretion of the appointing authority or Step I Appeal Designee. If necessary, the appointing authority or Step I Appeal Designee may seek information from the observers, but such observers may not advocate on behalf of the agency or the employee, absent specific circumstances. If more than one (1) representative of the agency, excluding the hearing officer, is in attendance and actively participating in the Step I Appeal Discussion, then the employee may have a non-lawyer representative participate in the appeal. The appointing authority shall issue a Step I Appeal Decision to the employee using their preferred method of communication (as designated on the Step I Appeal Form or written notification) no later than twenty (20) calendar days after receipt of employee's completed Step I Appeal Form or written notification.

Prior to issuing a Step I Appeal Decision, the appointing authority or Step I Appeal Designee may independently collect new evidence regarding a factual issue raised during the proceeding under Step I. If the appointing authority or Step I Appeal Designee independently collects new information, then the appointing authority or Step I Appeal Designee must provide a copy of the new information, as soon as practicable, to the employee. If the additional information obtained is otherwise deemed confidential, the employee must be given an opportunity to view the information in person or via other approved methods (i.e., redaction, substantive summary, etc.) but may not receive a copy. The employee shall acknowledge in writing confirming they have been provided with said confidential information. After the employee has received or viewed additional information, he/she may provide a written response to the appointing authority, or Step I Appeal Designee, in support or opposition of the additional information within three (3) business days. If the employee has additional relevant information, he/she can submit it with the written response.

In reaching the Step I Appeal Decision, the appointing authority or Step I Appeal Designee may consider information obtained as a result of independently collecting information related to factual issues raised during the Step I Appeal process, the documents presented during the Step I Appeal, and any additional information provided by the employee in response. The appointing authority shall take the employee's

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response to the additional information into consideration prior to issuing the Step I Appeal Decision, unless doing so would cause the appointing authority to violate the twenty (20) calendar day timeframe provided by statute. The appointing authority may ultimately uphold, 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 Agency Resource Center for approval within three (3) days. If back pay is awarded, the agency shall issue payment no later than thirty (30) calendar days from date of award. Any corrective action granted to the employee cannot go back more than thirty (30) calendar days prior to filing the Step I Appeal.

If the appointing authority does not issue a written decision within twenty (20) calendar days of receiving the Step I Appeal request, the employee may appeal to the Commissioner by filing an appeal in accordance with Step II. The employee may also proceed to Step II if the employee disagrees with the appointing authority's written decision. In either case, the employee's fourteen (14) calendar day timeframe in which to appeal to Step II begins the day after receipt of the Step I Appeal Decision or the day after a Step I Decision would otherwise be due, whichever is earlier.

Step II

The second step of the appeals process begins when an employee submits a completed Step II Appeal form or written notification to the Commissioner of the Department of Human Resources. The employee should attach the Step I Appeal Decision (if applicable), any appeal forms, along with any relevant documentation, to the Commissioner no later than fourteen (14) calendar days after the date of the appointing authority's Step I Appeal Decision (or the date it would have otherwise been due), if hand-delivered, or three (3) additional days if issued via mail. The Commissioner may appoint a designee to serve as his or her representative throughout Step II of the appeal process.

The Step II appeal form and relevant documentation shall be submitted to the Department of Human Resources 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).

Department of Human Resources
ATTN: Step 2
Seventeenth Floor, William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Boulevard
Nashville, TN 37243
Fax: (615) 401-6848
E-mail: DOHR.Step2Appeals@tn.gov

Once the completed Step II Appeal Form or written notification and relevant documentation is received by the Commissioner, the Commissioner will complete an initial review within five (5) calendar days to

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make a determination regarding timely submission of Step II information as well as review whether the employee providing a written justification to the Commissioner describing why the employee believes the Step I Appeal Decision was in error and ought to be overturned, reduced, or amended. Upon completion of the initial review, the Commissioner will notify both employee and agency whether the Step II Appeal Form and documentation was timely submitted and whether the employee is able to proceed with a Step II 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 employee and the agency, the Commissioner may collect additional information, if related to a factual issue raised during Step I, in order to make a well-informed decision. If independent information is collected by the Commissioner, the employee shall receive a copy of the information as soon as practicable. If the additional information obtained is otherwise deemed confidential, the employee must be given an opportunity to view the information in person or via other approved methods (i.e., redaction, substantive summary, etc.) but may not receive a copy. The employee shall acknowledge in writing confirming they have been provided with said confidential information. After the employee has received or viewed additional information, they may respond to the Commissioner or the appointing authority via written statement response in support or opposition of the additional information within three (3) business days. If the employee has additional relevant information, he/she can submit it with the written response.

After a thorough review of all relevant documentation, the Commissioner will prepare a Step II Decision, which will be delivered to employee and agency no later than thirty (30) calendar days from the date the Commissioner received the completed Step II Appeal Form and documentation. The Commissioner shall take the employee's response to additional information into consideration prior to issuing a Step II Appeal Decision, unless doing so would cause the Commissioner to violate the thirty (30) calendar days to respond as required by statute. The Step II Appeal Decision will be issued to the employee using his/her preferred method of communication (as designated on Step II Appeal Form or other communication). The Step II Appeal Decision letter will be sent to the agency's appointing authority, general counsel of the agency, human resources director, and Step I Appeal Designee by email. The Step II Appeal Decision shall include the Commissioner's determination as to whether the appointing authority's Step I Appeal Decision will stand, be remanded, 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) calendar days prior to employee's submission of completed Step I Appeal Form.

Either the employee or agency may appeal to the Board of Appeals if one of the following occurs: (1) DOHR does not timely issue a Step II Appeal Decision, (2) the employee disagrees with the Step II Appeal Decision, or (3) the agency disagrees with the Step II Appeal Decision.

Step II of the appeals process is the final administrative step for employees appealing a suspension of one (1) or two (2) days.

Step III

The third and final step of the appeals process is initiated by submission of a completed Step III Appeal Form or written notification and all relevant documentation, including the Step II Appeal Decision letter, to the Board of Appeals (sometimes "Board") no later than fourteen (14) calendar days after the date the employee or the agency receives the Step II Appeal Decision letter (or fourteen (14) calendar days after the date it would have otherwise been due) from the Commissioner if hand-delivered, or three (3) additional days if the Step II Appeal Decision was issued via mail. The form is to be fully completed by the employee or employee'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
Seventeenth Floor, William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Boulevard
Nashville, TN 37243
Fax: [\(615\) 401-6848](tel:6154016848)
E-mail: DOHR.Step3Appeals@tn.gov

The employee 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 Appeal Form or written notification 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) calendar 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) calendar 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 employee and agency will be notified by the method of communication selected on the Step III Appeal Form or other communication.

If all 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 as to whether the disciplinary action was unjustified. The Board shall issue its final decision no later than one hundred twenty (120) calendar days from the date the Step III Appeal

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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) calendar days after the filing of the Step III Appeal, the employee 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) calendar days before the hearing date.
3. All discovery must be completed no later than sixty (60) calendar days after filing the Step III Appeal and relevant documentation with the Board.
4. An extension to a deadline provided herein must only be granted in extraordinary circumstances with the agreement of both parties. In any event, an extension for the Board of Appeals to issue a final decision must not extend beyond one-hundred-forty (140) calendar days.

Prior to the Board of Appeals hearing, the employee 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 the employee and agency by the preferred method of communication selected on the Step III Appeal Form or other communication. 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) calendar 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 Appeal Decision, as well as reinstatement of leave, award of back pay and/or attorney's fees. A final order will be submitted to the employee or his or her representative and the agency by the preferred method of communication selected on the Step III Appeal Form or other communication. Neither party shall be entitled to a petition for reconsideration under Tenn. Code Ann. § 4-5-317.

If the employee is awarded back pay, reinstatement, or attorney's fees, the involved agency must comply with the final order within thirty (30) calendar days from the date of the final order. If back pay is awarded, the reinstatement order shall specifically address back pay to the employee and whether any offset of income earned from other employment or unemployment compensation claims will occur. If offset is to occur, the order shall include this information. If the employee is reinstated to a position from which the employee was terminated, the employee will be reinstated in the county where the employee was working prior to termination, unless an exception is granted by the Commissioner. An employee who successfully appeals dismissal for gross conduct and is reinstated must be credited with any annual leave

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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 employee 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) calendar 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: <https://www.tn.gov/hr/pr/forms-documents.html> by clicking on the link "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 the Office of the General Counsel.