

ARTICLE 12771

ADMINISTRATIVE GRIEVANCE SYSTEM

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SUBARTICLE 1. GENERAL PROVISIONS

1-1. Purpose. This article provides procedures for establishing and implementing an administrative grievance procedure in compliance with requirements of the Department of Defense (DOD) policy DOD 1400.25, subchapter 771, Administrative Grievance System (AGS), and Department of the Navy (DON), Guide No. 771-01. It also assigns responsibilities and prescribes requirements for the DOD AGS under which DON activities can internally review employee disputes involving working conditions within the control of the activity.

1-2. Policy

a. It is DON policy that DON employees shall be entitled to present grievances under the DON AGS and have them considered expeditiously, fairly, and impartially and resolved as quickly as possible. All persons involved in the dispute resolution process shall be free from restraint, interference, coercion, discrimination, or reprisal.

b. Alternative dispute resolution (ADR) techniques should be used to resolve grievances consistent with the requirements of this Sub-article. ADR techniques include a broad range of approaches for dealing with conflict and seeking solutions satisfactory to all parties. These techniques include, but are not limited to, problem solving, mediation, facilitation, conciliation, early-neutral evaluation, fact-finding, settlement conferences, ombudsmen, peer review, and arbitration.

1-3. Responsibilities

a. Heads of Navy Activities and Marine Corps Commands:

(1) Are authorized to decide all grievances filed by employees under their command.

(2) May delegate authority to decide grievances to subordinate managers and supervisors.

(3) May issue an implementing instruction following this guide and SECNAVINST 12771.1.

b. Deciding officials shall make decisions concerning grievances consistent with the requirements in this Sub-article. A deciding official must be assigned to an organizational level higher 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 activity or command.

c. Grievants. A grievant must present the grievance to the deciding official in writing and within the prescribed time limits. Each grievance must provide a clear statement of the issues and indicate the specific personal relief sought.

d. Human Resources Office (HRO). The HRO will:

(1) Provide advice, guidance, and necessary assistance on ADR and the processing of grievances to managers and employees.

(2) Maintain a separate grievance file for each written grievance filed under the DON 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.

(3) Track ADR techniques used, the total number of ADR processes attempted, the success rate, and any barriers to the use of ADR.

1-4. AGS Requirements

a. General. DON employees are entitled under the DON AGS to present grievances and to communicate with supervisors or managers and officials in their servicing HRO or HRSC, as appropriate. Employees may represent themselves or be represented by someone of their choice. Grievants and their representatives are entitled to freedom from restraint, interference, coercion, discrimination, or reprisal in presenting a grievance. Employees and their representatives shall have full access to relevant information and shall be given copies of such information unless to do so would be unduly burdensome or contrary to law or regulation. Employees shall be permitted a reasonable amount of official duty time, if otherwise in a duty status at the employing activity, to present grievances and to communicate with management and personnel officials. Employees may also be given a reasonable amount of official time to prepare a grievance.

b. Coverage

(1) Employee coverage

(a) The AGS covers current appropriated fund non-bargaining unit employees. It also covers former employees with respect to matters arising during their previous employment at the activity, provided that a remedy is available consistent with applicable law and regulation.

(b) The AGS covers bargaining unit employees when a matter covered by the AGS cannot be grieved under a negotiated grievance procedure (NGP), either because an NGP is not in effect at the relevant time or because it does not cover the matter being grieved.

(c) The AGS does not cover reinstatement and transfer eligibles that have applied for a position under a merit promotion program, non-citizens recruited overseas and appointed to overseas positions, or non-appropriated fund (NAF) employees.

(2) Subject matter coverage. Any employment matter may be grieved under the AGS except for the following:

(a) The content of published DON regulations and policy.

(b) Any matter covered by a negotiated grievance procedure or subject to formal review and adjudication by the Merit Systems Protection Board (MSPB), the Office of Personnel Management (OPM), the Federal Labor Relations Authority (FLRA), or the Equal Employment Opportunity Commission (EEOC); or any matter that the employee files under another review or reconsideration procedure.

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

(d) Preliminary notice of an action that, if effected, would be covered under the grievance system or excluded from coverage under Sub-article 1-4b(2)(b) above.

(e) The substance of an employee's performance elements, standards, or work objectives.

(f) Determinations concerning awards, additional step increases, recruitment or relocation bonuses, retention allowances, physicians comparability or additional pay allowances, supervisory differentials, or critical position pay.

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

(h) Termination of a probationer, return of an employee serving supervisory or managerial probation to a non-supervisory or non-managerial position, or separation or termination of an employee during a trial period.

(i) For Senior Executive Service (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 probation or for less than fully successful executive performance or for failure to be re-certified, conditional re-certification, or termination during probation for unacceptable performance.

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

(k) The termination of a temporary promotion at a time other than in Sub-article 1-4b(2)(j), provided the employee was informed in advance of the temporary nature of the appointment or promotion and the employee was returned to his or her former position from which temporarily promoted or to a different position of equivalent grade and pay.

(l) SES or Senior Level pay rate changes.

(m) A separation or termination action.

(n) Oral admonishments and letters of caution.

c. Time limits. When calculating time limits under the AGS, the day of an action or receipt of a document 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 these cases, the last day of the time limit shall be moved to the next regularly scheduled workday. All time limits are counted in calendar days.

d. Grievance file. The activity shall establish and maintain a separate file for each written grievance filed under the AGS and retain it for 4 years after the case is closed and in accordance with applicable laws and regulations. The file shall contain all documents or copies of documents related to the grievance.

e. Processing grievances. ADR techniques should be used as an alternative to formal administrative procedures to the maximum extent practicable in resolution of disputes. ADR techniques include a broad range of approaches for dealing with conflict and seeking solutions satisfactory to all parties. These techniques include but are not limited to mediation, facilitation, conciliation, fact-finding, settlement conferences, and arbitration.

(1) Informal Problem Solving Process

(a) An employee may informally present a work-related problem to his/her immediate supervisor before filing a formal grievance. If the problem involves a matter or action directly involving that supervisor and the employee has been unable to resolve the matter with that supervisor, the employee may present the matter to the next level supervisor, if any, within the activity or the command. The problem must be presented within 15 days following the date of the act or the event that the employee believes created the problem or the date the employee became aware of (or reasonably should have become aware of) the act or event. The employee may present a matter of concern regarding a continuing practice or condition at any time.

(b) A supervisor must consider the employee's problem and attempt to resolve it within 15 days and no later than 30 days from the date the problem is first brought to the supervisor's attention, even though it may not be covered by the grievance process. Where appropriate, the use of a neutral (e.g., conciliator, facilitator, or mediator) is encouraged. If the employee presents the problem orally, the supervisor's determination may be oral or written. If the problem is presented in writing, the determination must be in writing. If the problem was not resolved, the supervisor shall inform the employee of the time limits for filing a grievance. If the supervisor believes the matter is not covered by the grievance process, the supervisor shall so inform the employee and advise the employee of the appropriate process, if any, for resolving the problem.

(c) The above time limit for resolving the problem may be extended by mutual agreement to accommodate resolution of the dispute.

(2) Formal Grievance Process

(a) An employee may file a formal, written grievance with the designated deciding official (or any official designated to accept grievances on behalf of the deciding official) when a problem is not resolved during the problem-solving process or where the employee chooses to bypass that process and invoke the grievance process. If the employee used the informal problem-solving process or ADR process and the matter was not resolved, the employee must file a grievance no later than 15 days after the ADR process concluded or a decision was rendered on the informal grievance. Where the employee does not use the problem-solving process but raises the matter initially as a grievance, the employee must present the grievance within 15 days following the date of the act or event that the employee believes created the problem, or within 15 days following the date the employee became aware of (or reasonably should have become aware of) the act or event. The employee may present a grievance regarding a continuing practice or condition at any time.

(b) An employee's grievance must be signed, dated, and contain a sufficiently detailed statement of the specific issue(s) and the specific, personal remedy sought; a statement that the employee has not filed an appeal or complaint (such as an EEO or IG complaint) on the same issue; copies of any documents in the employee's possession related to the grievance; and the name, address, and telephone number of the employee's representative, if any. The remedy must be personal to the employee and may not include a request for disciplinary or other action affecting another employee. An employee may not grieve the same matter raised in any other grievance, appeal, complaint, or other review and consideration process.

(c) The deciding official shall determine whether to join similar or identical grievances; whether to require and how to conduct an investigation; whether to allow the grievant's requested representative; and how much official time shall be granted to the employee and the employee's representative. The deciding official may also designate an impartial individual to examine a grievance and when authorized, to make recommendations concerning its disposition.

(d) The deciding official shall fully and fairly consider the grievance and issue a written decision with supporting rationale for the decision. The deciding official shall issue the decision as soon as possible but normally no later than 60 days from the filing of the grievance. The deciding official may extend time frames when warranted by special circumstances (e.g., when those involved are geographically dispersed or where a fact-finder is used in the process). However, a grievance decision should be rendered no more than 90 days from the filing of the grievance absent mutual agreement to extend this time limit to accommodate resolution of the dispute. If the deciding official fails to render a decision within 90 days absent such mutual agreement, the grievant may request review by the next higher management level, if any, within the activity.

(e) Wherever possible, the deciding official should rule on the merits of a grievance. However, the deciding official may cancel or temporarily suspend a grievance, or the appropriate portion of a grievance if:

1. The grievant requests such action;

2. The grievant or grievance is excluded from coverage;
3. The grievant fails to provide sufficient detail to identify clearly the matter being grieved or specify the personal relief requested;
4. The grievant fails to comply with applicable time limits or procedural requirements;
5. The grievant requests action(s) be taken against another employee; or
6. The grievant raises the same matters under another formal dispute resolution process.

(f) A deciding official's decision on the merits of the grievance is final and not subject to further review. However, an employee may request that an individual at the next higher management level within the activity, if any, review a decision to cancel a grievance. The employee's request for review of a decision to cancel a grievance or a portion of a grievance must be submitted within 15 days from the date of receipt of the decision to cancel the grievance.

(3) Disallowance of Grievant's Representative. The deciding official may disallow the choice of an individual as a representative who would result in a conflict or apparent conflict of interest or position, a conflict with the priority needs of the activity or command, or would give rise to an unreasonable cost to the Federal Government. If a deciding official disallows the grievant's choice or representative, that decision may be grieved within 10 days to the next higher level of management unless the deciding official is the head of the activity or command; in which case, the decision is final and is not subject to further review(s).

(4) Combining Grievances. When two or more employees within the same activity have identical grievances (i.e., the dissatisfaction expressed and the relief requested are the same), activities may join and process them as one grievance. The employees will be so notified and will be required to designate a common representative.

1-5 Merit Staffing Qualifications, Rating, and Ranking Appeals (N)

Procedures. The following grievance procedure must be used by an employee wishing to appeal qualifications determinations, ratings, and/or rankings under Merit Staffing Program announcements from the HRSC-SE.

- a. Within 15 calendar days after receipt of an ineligibility letter, the employee may request a review of his/her ineligibility rating by calling during business hours or sending written notification to the HRSC-SE Personnel Staffing Specialist. If written, the letter must contain sufficient information to determine what the employee is contesting and should specify the corrective action desired. The HRSC-SE Personnel Staffing Specialist will issue a written decision to the employee concerning his/her ineligibility rating within fifteen (15) calendar days after completion of the review.

b. If the employee is not satisfied after review and decision by the HRSC-SE Personnel Staffing Specialist, the employee may submit the matter as a formal grievance to the Customer Focused Division Head, HRSC-SE, within fifteen (15) calendar days after receipt of the decision by the HRSC-SE Personnel Staffing Specialist.

c. It is understood that failure to be selected for promotion when proper promotion procedures have been used; that is, non-selection from among a group of properly rated and certified candidates, is not a basis for a complaint or a grievance.