

DOCUMENT RESUME

00654 - [A0751189]

[Statutory Appeals Available to Federal Employees]. FPCD-77-21; B-179810. February 8, 1977. 3 pp. + 2 enclosures (12 pp.).

Report to Chairman, Civil Service Commission; by E. L. Krieger, Director, Federal Personnel and Compensation Div.

Issue Area: Personnel Management and Compensation (300).

Contact: Federal Personnel and Compensation Div.

Budget Function: General Government: Central Personnel Management (805).

Authority: Civil Service Act of 1976; H.R. 12080 (94th Cong.). 5
C.F.R. 351-53. 5 C.F.R. 300. 5 C.F.R. 315. 5 C.F.R. 330. 5
C.F.R. 430. 5 C.F.R. 511. 5 C.F.R. 531, 532. 5 C.F.R. 713. 5
C.F.R. 731. 5 C.F.R. 733. 5 C.F.R. 752. 5 C.F.R. 754. 5
C.F.R. 831. 5 C.F.R. 870.205. 5 C.F.R. 890, 891.

Procedures available to Federal employees seeking reconsideration of unfavorable management actions or decisions were surveyed. Discussions were held with officials of the Civil Service Commission (CSC) and other Federal agencies in the St. Louis area. Findings/Conclusions: The statutory appeals process is generally perceived as overcomplicated and in need of change. Each appellate category may involve varying procedural requirements and adjudication by various review bodies within and outside the Civil Service Commission. More than one appeal category may be applicable. There is considerable potential for processing delays, overlapping appeals, and conflicting decisions. The appeals program is frequently viewed as management-oriented. Federal employees generally rely on their agency for information and assistance in appeal matters, and it is noted that individuals are not given adequate appeal information and assistance by their agencies. (RRS)

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UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

FEDERAL PERSONNEL AND
COMPENSATION DIVISION

FEB 8 1977

B-179810

The Honorable Chairman
U.S. Civil Service Commission

Dear Mr. Chairman:

We have surveyed the procedures available to Federal employees seeking reconsideration of unfavorable management actions and decisions. We studied the laws and regulations relating to statutory appeals and discussed these matters with officials of the U.S. Civil Service Commission and various agencies in the St. Louis vicinity. We are furnishing our observations for your consideration in improving the structure and administration of the employee appellate program.

Due process rights of Federal employees have evolved over the years and comprise a patchwork of laws and regulations. Existing statutory appeals encompass a broad range of management actions and decisions; as you know, more than 20 types of actions and decisions are appealable under separate statutory procedures. (See enc. I.)

Our discussions with agency officials and employee representatives indicated that the statutory appeals process is generally perceived to be overly complicated and in need of change. Regulations prescribed by the Commission govern the initiation and procedural steps involved in taking administrative action as well as the procedural steps employees must follow to appeal for reconsideration of such action. Each appellate category may involve varying procedural requirements and adjudication by various review bodies within and outside of the Commission. (See enc. II.) Also, because individual cases are not often limited to distinct issues, more than one appeal category may be applicable. Employees often must choose which appeal to pursue and may, in many instances, process several different appeals concurrently which involve the same basic issue. Consequently, there is considerable potential for processing delays, overlapping appeals, conflicting decisions, and a general unclearness concerning the rights and obligations of the parties involved.

In spite of actions taken by the Commission in recent years to improve the appellate process, the objectivity and independence of the program are often questioned. Whether rightly or wrongly, the

FPCD-77-21

appeals program is frequently viewed as management oriented. Union representatives generally would prefer that all matters be subject to negotiated grievance procedures and arbitration which is viewed as a fast, fair, and impartial third party review process. As you know, proposed labor relations legislation would make it possible to process matters now subject to statutory appeal procedures, under negotiated grievance systems. Those employees not covered by a negotiated procedure could still presumably use the statutory appeal procedure.

Additionally, Federal employees generally rely on their agency for information and assistance in appeal matters. A number of employee representatives commented that individuals are not given adequate appeal information and assistance by the agencies. We noted that in those agencies contacted, information given to employees on statutory appeals was generally limited. In one agency, new employees were orally briefed on appellate protections during an orientation seminar. In most other instances the available literature on appeals was either very broad or incomplete.

In testimony on H.R. 12080, the "Civil Service Act of 1976," the Commission supported the objective of greater independence for the appellate program and recommended the establishment of one appeals body, within the Commission, responsible for handling all appeals. One appellate body would simplify the processes and enhance the perception of objectivity and independence of the appellate body.

Because of the limited scope of our survey, we are not making any specific recommendations. We are hopeful that our observations will be of use in considering improvements in the structure and administration of the appellate program. We would appreciate being kept advised of any proposed changes to the appellate processes. We have several other assignments that touch on various aspects of employee grievances and appeals and anticipate that this subject area will continue to be a significant issue in structuring a legislative collective bargaining program.

Copies of this letter are being sent to the House and Senate Committees on Post Office and Civil Service and on Government Operations.

B-179810

Sincerely yours,

A handwritten signature in black ink, appearing to read "H. L. Krieger". The signature is written in a cursive style with a large, prominent initial "H".

H. L. Krieger
Director

Enclosures - 2

STATUTORY APPEALS PROCEDURES

<u>Action or decision</u>	<u>Taken by</u>	<u>Appealable to</u>	<u>Hearing</u>
Adverse action against: Preference eligibles	Agency or <u>a</u> /CSC	<u>b</u> /FEAA	Yes
Nonpreference eligibles and competitive service eligibles	Agency or CSC	FEAA	Yes
Classification and job grading: General schedule	Agency	CSC	No
Prevailing rate	Agency	Agency/ then CSC	No
Discrimination	Agency	Agency/ then <u>c</u> /ARB	Yes
Level of competence decisions	Agency	Agency/ then FEAA	No
Performance rating appeals	Agency	Performance Review Board	Yes
Restoration to duty: Military service	Agency	FEAA	No
Compensable injury TAPER employees (note e)			
Retirement decisions: Disability	CSC	FEAA	Yes
Hiss Act		<u>d</u> /ALJ	Yes
Other		ARB	No
Adverse action for political activity-- excepted service	Agency	Civil Service Commissioners	Yes

ENCLOSURE I

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<u>Action or decision</u>	<u>Taken by</u>	<u>Appealable to</u>	<u>Hearing</u>
Adverse suitability rating	a/CSC	b/FEAA	No
Denial of life insurance coverage	Employing Office	c/ARB	No
Health benefit decisions (coverage):			
Employees	Agency	ARB	No
Retirees	CSC	ARB	No
Denial of reemployment or reinstatement rights:			
Executive agency transfer	Agency	FEAA	No
International organizational transfer	Agency	FEAA	No
Foreign assistance act transfer	Agency	FEAA	No
Employment practice	CSC	ARB	Yes
Examination ratings	CSC	CSC or Examining Review Board	No
Reemployment/reinstatement eligibility:			
After removal for security		CSC	No
After removal for suitability		CSC	No
Reduction-in-force	Agency	FEAA	Yes (preference eligibles only)
Salary retention decision	Agency	FEAA	No
Separation of probationers:			
Post-appointment	Agency	FEAA	No
Pre-appointment	Agency	FEAA	No

ENCLOSURE I

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<u>Action or decision</u>	<u>Taken by</u>	<u>Appealable to</u>	<u>Hearing</u>
Suspension--30 days or less	Agency	FEAA	NO
Reemployment priority rights	Agency	FEAA	No

- a/ CSC--Civil Service Commission.
- b/ FEAA--Federal Employee Appeals Authority.
- c/ ARB--Appeals Review Board.
- d/ ALJ--Administrative Law Judge.
- e/ TAPER--Temporary appointment pending establishment of a register.

SUMMARY OF
STATUTORY APPEAL PROVISIONS

ADVERSE ACTIONS--5 CFR 752 (by Agencies), 5 CFR 754 (by CSC)

Adverse actions include (a) removals, (b) suspensions for more than 30 days, (c) furloughs without pay, and (d) reductions in rank or pay.

An eligible employee is generally entitled to at least 30 days advanced written notice of a proposed adverse action and the right to make a written or oral reply or both prior to the final decision on the proposed action and to remain in a duty status during the notice period. The final adverse decision must be made by a higher level official than the official who initially proposed the action. The employee may appeal the adverse action to the Federal Employee Appeals Authority (FEAA) no later than 15 days after the action has been in effect. Procedures provide for a hearing before the FEAA. The decision of FEAA is final unless either party petitions the Appeals Review Board (ARB) to reopen and reconsider the case. ARB may reopen and reconsider a decision only when established criteria are met.

CLASSIFICATION AND JOB GRADING--5 CFR 511 (General Schedule),
5 CFR 532 (Prevailing Rate)

General schedule or prevailing rate employees who suffer a loss of grade or pay which is based in whole or part on a classification decision are entitled to appeal from the decision.

General schedule employees have three appeal alternatives:
(1) appeal to the agency, (2) appeal through the agency to CSC, or
(3) appeal directly to CSC. No hearing is provided for an appeal
from classification decisions to CSC and its decision is final.

Classification appeals by employees under prevailing rate
systems must be initially filed in the agency. The agency decision
may be appealed to the appropriate office of CSC. No hearing is
provided on appeals to CSC and its decision is final.

DISCRIMINATION--5 CFR 713

Generally, employees who feel they have been discriminated
against because of race, color, religion, sex, or national origin
may file an Equal Employment Opportunity complaint. Before filing
a formal complaint, the employee must first discuss the matter with
an EEO Counselor. If no solution is reached, a formal complaint may
be filed with the agency. Briefly, the complaint procedure involves
an impartial investigation by an examiner, a right to a hearing, and
a final decision by the agency. Agency decisions may be appealed to
CSC's ARB or a civil action may be filed in a U.S. District Court.
ARB decisions on discrimination appeals are final. A civil action
may also be filed following a decision of the ARB.

LEVEL OF COMPETENCE DECISIONS--5 CFR 531 (Subpart D)

Level of competence appeals are initially made at the agency
level. Agency decisions on appeals which sustain a negative determination

may be appealed to CSC. Employees must be informed in writing of the agency's decision no later than the completion of the waiting period for advancement. They must also be informed of the right to seek further reconsideration from CSC.

PERFORMANCE RATING APPEALS--5 CFR 430

Heads of Federal agencies are required to establish one or more boards to consider and pass on the merits of performance ratings within the agencies.

An employee with an unsatisfactory rating is entitled, by statute, to an agency review or an appeal directly to the established performance review board, or an appeal to the performance review board after obtaining the agency review. An employee with a satisfactory or better rating is entitled to an impartial agency review or an appeal to the performance review board, but not both.

Generally the appeal must be filed within 30 days after notice of the rating. The performance review board conducts hearings on rating appeals unless the employee waives this procedure.

RESTORATION TO DUTY--5 CFR 353

Employees returning from military duty or a compensable injury are entitled to restoration by the agency. When an agency refuses to restore, determines that it is not feasible to restore, or makes an improper restoration, the individual may appeal the decision to CSC. Similar rights are given to employees serving in a position in the competitive service under a temporary appointment pending establish-

ment of a register.

DISABILITY RETIREMENT DECISIONS--5 CFR 8311

Decisions by CSC on applications for disability retirement may be reconsidered by the appropriate Bureau Director on his own initiative or upon request within 15 calendar days after receipt of the decision on the application. These decisions may be appealed by the agency or the employee to FEAA. The appellant may request a hearing on the appeal. The FEAA decision is final unless either party petitions the ARB to reopen and reconsider the case. On an employee petition, the action recommended in the FEAA decision is stayed pending the ARB decision.

ADVERSE ACTION FOR POLITICAL ACTIVITY--
EXCEPTED SERVICE--5 CFR 733 (Subpart B)

Investigations and charges of prohibited political activity of excepted service employees are the responsibility of the agency. Employees against whom charges are placed must be notified of those charges at least 30 days prior to the effective date of the proposed adverse action. The employee may answer the charges within 15 days and is entitled to remain in active duty status until a final decision is made by the agency. If the agency decides that the employee has engaged in prohibited political activity, the penalty is removal. The agency decision may be appealed to CSC and its decision is final.

ADVERSE SUITABILITY DETERMINATIONS--5 CFR 731

Adverse suitability determinations are initiated by CSC. For a period of up to 1 year after the effective date of an appointment,

CSC may instruct an agency to remove an appointee when it finds that he is not qualified or is not suitable for any of the reasons contained in the governing regulations.

Adverse suitability determinations--disqualification from examination or appointment and disqualification of an appointee in probation status--are appealable to the FEAA. No hearing is provided for these appeals. Either party may petition the ARB to reopen and reconsider the case. When the ARB is requested to reopen and reconsider the case, the action recommended in the FEAA decision will be held in abeyance pending the ARB decision.

DENIAL OF LIFE INSURANCE COVERAGE--5 CFR 870.205
FEDERAL EMPLOYEE HEALTH BENEFITS--5 CFR 890
RETIRED FEDERAL EMPLOYEE HEALTH BENEFITS--5 CFR 891

These types of appeals involve decisions by CSC on issues of entitlement to rights or benefits of employees. Appeals are made directly to the ARB. The time limit for filing an appeal differs according to the category of the action. For example, the time limit for appealing a retirement decision is 30 days and, the time limit for regular and optional life insurance appeals is 6 months. None of the appeal categories provide for a hearing before the ARB, and its decision is final.

DENIAL OF REEMPLOYMENT OR REINSTATEMENT RIGHTS--5 CFR 352

Employees with the following entitlements, who are denied re-employment, may appeal the decision to CSC:

- Reemployment rights based on movement between executive agencies during emergencies,
- Reemployment rights after the detail and transfer of Federal employees to an international organization,
- Reinstatement rights after service under Section 233(d) and 625(b) of the Foreign Assistance Act of 1961,
- Reemployment rights after service in the Economic Stabilization Program.

EMPLOYMENT PRACTICE APPEALS--5 CFR 300 (Subpart A)

A candidate who believes that an employment practice which was applied and which is administered or required by CSC, violates one of the basic requirements listed in governing regulations, is entitled to file an appeal directly with the ARB and is entitled to a hearing on appeal. A candidate alleging discrimination with respect to an agency employment practice may file a complaint with the agency. An employee who believes that an employment practice which was applied violates a basic requirement of the regulations may file a grievance under the agency grievance system or a negotiated grievance system.

EXAMINATION RATINGS--5 CFR 300

Examination ratings or the rejection of applications may be appealed to CSC. The instructions and procedures to be followed for these appeals are contained in chapter 337 of the Federal Personnel Manual.

REEMPLOYMENT/REINSTATEMENT ELIGIBILITY--5 CFR 732 (Security)
--5 CFR 731 (Suitability)

An employee who was discharged, or who resigned while in suspension status or while charges were pending, from an agency for reasons of national security has no right to appeal to CSC but may request a determination by CSC of eligibility for employment in another agency of the Government.

An employee removed for reasons other than security or loyalty may appeal the action to the FEAA. The decision of the FEAA is final unless the individual petitions the ARB to reopen and reconsider the decision.

Employees removed for reasons other than loyalty or security may also request CSC to determine eligibility for further employment in the competitive service.

REDUCTION-IN-FORCE--5 CFR 351

A right of appeal is available to employees against whom a reduction in force action is taken. Employees must be given a written advance notice of proposed action at least 30 days before the effective date of a reduction in force action involving release. When possible the agency must retain employees in an active duty status during the notice period.

An employee may appeal the action to the FEAA. Only preference-eligible employees are entitled to a hearing on appeal. The decision of FEAA is final unless either party petitions the ARB to reopen and reconsider the case.

SALARY RETENTION--5 CFR 531 (Subpart E)

Employees are entitled to salary retention benefits when demoted within the general schedule or to general schedule positions without personal cause, not at their own request, and not in a reduction-in-force due to a lack of funds or a curtailment in work. To be entitled to salary retention, an employee must have served for 2 continuous years in the same agency and in a grade or grades higher than the grade to which demoted. Work performance during the 2-year period must be satisfactory or better.

An eligible employee denied salary retention benefits may appeal to the FEAA. There is no right to a hearing and the decision is final unless either party petitions the ARB to reopen and reconsider the case.

SEPARATION OF PROBATIONERS--5 CFR 315

Employees in probation status have no right to appeal a separation unless the employee alleges (a) discrimination, or (b) that the action was procedurally defective. The merits of the action may be reviewed and considered under an appropriate grievance procedure. The appellate review does not include a hearing. Although the decision of FEAA is final, either party may petition the ARB to reopen and reconsider the case.

SUSPENSIONS OF 30 DAYS OR LESS--5 CFR 752 C

Short suspensions (30 days or less) may be appealed to the FEAA. Appellate review is limited to the procedures used in effecting the

suspension unless some form of discrimination is alleged or if the suspension was imposed during the advance notice period of an adverse action, CSC reviews the reasons for not retaining the employee in active duty status, if the employee appeals from the final adverse action. CSC decision is final unless either party petitions the ARB to reopen and reconsider the case.

REEMPLOYMENT PRIORITY RIGHTS--5 CFR 330

Federal agencies, except in certain situations, may not fill a competitive position by (1) a new appointment, (2) transfer, or (3) reemployment of a person not on the reemployment priority list. If an agency appoints a person not on the list or appoints a person who has a lower standing than others on the list, those adversely affected by the appointment must be notified by the agency of the reason for the exception and of their right to appeal to the FEAA. No hearing is provided on these appeals. Either party may petition the ARB to reopen and reconsider the decision.