

SECTION 404 ADMINISTRATIVE GRIEVANCE SYSTEM

1. Purpose. This section describes the DoN Administrative Grievance System (AGS), promulgated by the Office of the Assistant Secretary of Defense on 18 March 1994. Covered employees may use the AGS for resolving matters of personal concern and dissatisfaction.

2. Policy. DoN employees are entitled to present grievances and to communicate with supervisors and managers and representatives of their servicing HRO without restraint, interference, coercion, discrimination or reprisal. Grievances shall be considered expeditiously, fairly and impartially. During the AGS process, supervisors and managers are encouraged to use Alternative Dispute Resolution (ADR) techniques, such as the problem-solving step outlined below, mediation, fact-finding, peer group review, or settlement agreements should the grievant be willing. These procedures are designed to achieve AGS objectives.

3. Responsibilities

a. Commanding Officers, Officers-in-Charge, or civilian heads of activities:

- (1) Will implement the mandatory provisions of the AGS stated below.
- (2) Are authorized to decide all grievances filed by employees under their command review.
- (3) May delegate authority to decide grievances to subordinate managers and supervisors.

b. Military and civilian managers and supervisors will:

- (1) Become thoroughly familiar with the content of this section, impartially reviewing matters brought to their attention by employees on an informal basis.
- (2) Take appropriate corrective action when the matter brought forward by an employee or group of employees has merit.
- (3) Carry out the supervisory or managerial responsibilities stated in any informal ADR process agreed to or utilized in paragraph 6a or the duties and responsibilities of the deciding official outlined in paragraph 6b.
- (4) Objectively and impartially perform the duties of an investigating officer, if so tasked by the deciding official.

c. HRO (Code 520) will:

- (1) Provide advice and guidance to serviced activities on the implementation and processing of informal and formal grievances.
- (2) Inform employees of their right to file a grievance and the procedures that are applicable.
- (3) Provide training to supervisors and managers on AGS and ADR techniques.
- (4) Establish and maintain a separate file for each written grievance filed under the AGS and retain that file for four years, in accordance with applicable laws, regulations, and records retention schedules. The file will contain all documents or copies of documents related to the grievance as turned over by the deciding official.

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4. Coverage

a. This section applies to all activities serviced by the HRO Yokosuka for which an ISSA has been established providing Employee Relations support.

b. The AGS covers all current DoN employees who are not in established bargaining units, except those listed below. Former employees may also seek redress for grievances under the AGS. 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

(1) A non-U.S. citizen appointed under 5 CFR Section 8.3 or any other non-U.S. citizen recruited overseas and appointed to an overseas position.

(2) An alien appointed under Section 1471(5) of Title 22, United States Code (USC).

(3) An individual paid from nonappropriated funds.

(4) A physician, dentist, nurse, or other employee appointed under Chapter 73 of Title 38, USC.

(5) Civilian Mariner employees of the Military Sealift Command.

c. Any matter of personal dissatisfaction or concern may be grieved under this procedure except the following, which are **excluded** by regulation:

(1) The content of established DOD, DON, or other agency regulations and policy.

(2) Any matter covered by a negotiated grievance procedure.

(3) Any matter subject to formal review and adjudication by the MSPB, the OPM, the Federal Labor Relations Authority (FLRA), or the EEOC.

(4) Any matter which the employee files under another review procedure, a reconsideration procedure, or a dispute resolution process within DOD.

(5) Non-selection for promotion from a group of properly ranked and certified candidates, or failure to receive a non-competitive promotion.

(6) A proposed notice of an action which, if effected, would be covered under the grievance system or excluded from coverage by paragraph 4c(3) of this section.

(7) An action which terminates a temporary promotion within a maximum period of two years:

(a) And returns the employee to the position from which the employee was temporarily promoted.

(b) Reassigns or demotes the employee to a different position that is not at a lower grade or pay than the position from which the employee was temporarily promoted.

(8) Termination of a term promotion at the completion of the project or specified period, or at the end of a rotational assignment in excess of two years but not more than five years.

(9) A supervisor's determination of the work plan objectives, critical elements, and performance standards of an employee's position.

(10) The granting, recommendation, or failure to grant an employee performance or incentive award, the adoption or failure to adopt an employee

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suggestion or invention, or the receipt or failure to receive an honorary award or quality step increase.

(11) The decision to withhold an within-grade step increase or the failure to grant a general salary increase based upon an employee's rating of record of minimally successful rating or below.

(12) The termination of an employee serving on a probationary or trial period.

(13) The return of an employee from an initial appointment as a supervisor or manager to a non-supervisory or non-managerial position for failure to satisfactorily complete the probationary period.

(14) A separation action not otherwise excluded above.

(15) A letter of caution.

(16) An action taken under the terms of a formal agreement voluntarily entered into by an employee which either:

(a) Assigns the employee from one geographical location to another.

(b) Returns the employee from an overseas assignment.

(17) The decision to include an employee's position in the pool of activity positions subject to random drug testing.

(18) Determinations concerning recruiting or relocation bonuses, retention allowances, supervisory differentials, critical position pay, or dual compensation waivers.

5. Definitions

a. Grievance. A written request by an employee or a group of employees for personal relief in a matter of concern or dissatisfaction relating to the employment of the employee(s). Such a matter of concern or dissatisfaction must be subject to the control of the head of the activity.

b. Personal Relief. A specific remedy directly benefiting the grievant(s). A request for disciplinary action or other action affecting another employee is not an acceptable form of personal relief.

c. Deciding Official. The management official at the lowest level who may grant the relief to an employee (normally, this is the second-line supervisor). If such official has been personally involved in the matter being grieved or caused the action that is now being grieved through a subordinate supervisor, the management official at the next higher level will become the Deciding Official. Unless personally involved, the Deciding Official may not be higher than the military/civilian head of the activity.

d. Representative. A person chosen by the grievant to act on behalf of the grievant. The person chosen must consent to act as a representative. In order to be recognized as a representative by the Deciding Official, the grievant must designate the representative in writing. The grievant may change representatives at any time during the grievance process.

e. Day. Calendar-day, i.e., formal grievances must be filed within 15 days (calendar-days) from receipt of management's response to the optional problem-solving phase.

6. Administrative Grievance Procedures. The procedures stated in paragraph 6a are optional and may be utilized by the grievant in the manner stated

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therein. Other ADR techniques may be used at this "informal" phase, if mutually agreeable between management and the grievant(s). The procedures in paragraph 6b are mandatory and must be utilized by all grievants and supervisory/managerial personnel involved in the "formal" grievance. ADR techniques also may be utilized after the formal grievance has been received.

HRO, Code 520, is available for advice and guidance on various ADR techniques that may be chosen to best fit the circumstances of the grievance. Employees are encouraged to resolve grievances informally at the lowest level.

a. Problem-Solving Process. This is an informal ADR optional process. Should the employee so choose, he/she can "informally" present any work-related matter to his/her immediate supervisor before filing a formal grievance. If the problem involves a matter or action involving that supervisor, the employee may present it to the next level supervisor. The matter of concern or dissatisfaction to the employee must be presented to the cognizant supervisor within 15 days following the date of the act or event creating the problem, or the date the employee became aware of the act or event. An employee may present a matter or concern regarding a continuing practice or condition at any time.

(1) The supervisor to whom the matter has been presented must consider the employee's problem and attempt to resolve it. If the supervisor believes the matter is not covered under the AGS, he/she must inform the employee; this, however, does not terminate the employee's right to pursue the matter as a formal grievance.

(2) This stage should be concluded as expeditiously as possible, including the supervisory determination on the matter, within 30 days. A final determination on the matter must be issued to the employee no later than 60 days from the date it was brought to the supervisor's attention. If the employee presented the problem orally, the supervisor's reply may be oral although the supervisor should document the date the determination was given the employee. If the problem was presented in writing, the determination must be in writing. In transmitting his/her determination, the supervisor should indicate to whom the formal grievance should be filed should the employee not be satisfied with the results of the informal process and inform the employee that the formal grievance must be filed within 15 days of his/her determination.

b. Formal Procedures. An employee may file a formal, written grievance with the designated deciding official (normally, the employee's second level supervisor or as designated by the military/civilian activity head) when a problem is not resolved during the problem-solving process or other ADR process or when the employee elects to bypass an informal ADR process and invoke the formal administrative grievance procedures. If the employee used an informal ADR process, including problem-solving, the employee must file his/her formal grievance no later than 15 days from the conclusion of that process. If the employee is raising the matter without going through an informal process, in order for the grievance to be timely filed it must meet the timeliness aspects stated in paragraph 6a. Note that the day of an action or receipt of a document is not counted toward the time limits. If the last day of the filing time limit falls on a Saturday, Sunday, or a legal holiday, the time limit will be extended to the end of the grievant's next scheduled workday.

(1) Employee's Rights/Requirements

(a) Employees shall be given the right to represent themselves or to be represented by an individual of their own choice in filing a grievance. The deciding official may disallow the choice of a representative if it would result in a conflict of interest or position, conflict with mission priorities, or result in unreasonable costs to the activity.

(b) An employee's formal grievance must be signed, dated, and

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contain a sufficiently detailed statement of the specific issue(s) and the personal relief sought; 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. Issues raised by the employee in any other grievance, appeal, or complaint are not grievable under the AGS.

(2) Deciding Official's Rights/Responsibilities. The deciding official will determine:

(a) Whether to join similar or identical grievances, if others are received on the same issue(s).

(b) Whether to require an investigation and how it shall be conducted or to utilize ADR techniques agreeable to the grievant to resolve the matters at issue.

(c) Whether to allow the grievant's requested representative.

(d) How much official time shall be granted to the employee and the employee's representative, if the latter is also an employee of the activity.

(e) The deciding official may also designate an individual to investigate the grievance and, if authorized, make recommendations to the deciding official concerning its disposition. The individual chosen by the deciding official as the investigator must not have been involved in the grievance or the matter being grieved or occupy a position subordinate to any official involved in the matter, unless the official involved is the head of the activity.

(f) The deciding official shall fully and fairly consider the grievance and issue a written decision, to include the basis for his/her decision. The decision shall be issued as soon as possible, but no later than 60 days from the filing of the formal grievance. The deciding official may extend time frames when warranted by special circumstances (e.g., when those involved are geographically dispersed or where an outside fact-finder is used in the process).

(g) A grievance, or portion of a grievance, may be canceled or temporarily suspended at the grievant's request; if the grievant or matter being grieved is excluded from coverage; if the grievant fails to comply with applicable time limits or procedural requirements or requests actions to be taken against another employee; or the employee raises the matter under another formal dispute resolution process.

(h) The deciding official's decision on the merits of the grievance is final and not subject to further review, even if the deciding official was not the military/civilian head of the activity. An employee, however, may request an individual at the next higher management level to review a decision to cancel a grievance. A decision on the merits is not a cancellation of a grievance.

7. Allegations of Discrimination. If an allegation of discrimination because of race, color, national origin, sex, age, religion, or handicapping condition is raised at any stage of the grievance process, the supervisor or Deciding Official will inform the grievant, in writing, that introduction of the allegation will serve to terminate the processing of the matter under this section. The grievant will be given the opportunity to withdraw the allegation and continue the grievance under AGS or proceed under the discrimination complaint procedure. The grievant's decision must be documented and made part of the grievance file. If the grievant chooses the discrimination complaint procedure, the Deciding Official will cancel the grievance, notify the grievant in writing of the cancellation and forward the grievance file to HRO, Code 520.

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