

10.101

Published in advance of incorporation in  
NRC Manual Chapter 4157  
File and retain in Manual until superseded.

UNITED STATES NUCLEAR REGULATORY COMMISSION  
NRC MANUAL

BULLETIN

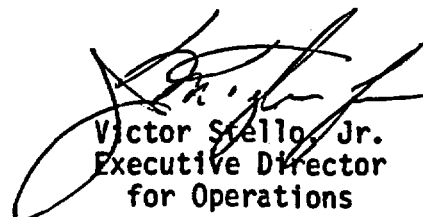
NO. 4157- 173

DATE: June 5, 1987

SUBJECT: REVISION IN DELEGATIONS OF AUTHORITY

1. Purpose: This Bulletin revises responsibilities and delegations of authority to conform with the NRC reorganization, effective April 12, 1987. These changes will be reflected in the next revision of Chapter 4157.
2. Generic Changes: In 033 and throughout, references to the Director, Division of Organization and Personnel, should be construed as references to the Director, Office of Personnel.  
  
In 047 and throughout references to the Chief, Labor Relations Branch, should be construed as references to the Chief, Policy and Labor Relations.
3. Specific Changes: Revised responsibilities are listed below.

<u>Citation</u>	<u>Function</u>	<u>From</u>	<u>To</u>
032 and Appendix 4157 G.6.	References to Director, Office of Administration, are no longer applicable.		

  
Victor Stello, Jr.  
Executive Director  
for Operations

U. S. NUCLEAR REGULATORY COMMISSION  
NRC MANUAL  
TRANSMITTAL NOTICE

NRC APPENDIX 4157 EMPLOYEE GRIEVANCES

SUPERSEDED:

Number	Date
Chapter _____	_____
Page _____	_____
_____	_____
_____	_____
Appendix <u>NRC-4157, 11-12</u>	<u>9/18/84</u>

TRANSMITTED:

Number	Date
TN <u>4100-132</u>	<u>9/17/90</u>
Chapter _____	_____
Page _____	_____
_____	_____
_____	_____
Appendix <u>NRC-4157, 11-12</u>	<u>9/18/84</u> <u>9/17/90</u>

REMARKS:

This revision adds to the list of candidates for potential selection as a grievance review examiner any available judges within the Atomic Safety and Licensing Board Panel (ASLBP).

U. S. NUCLEAR REGULATORY COMMISSION  
NRC MANUAL  
TRANSMITTAL NOTICE

NRC APPENDIX 4157 EMPLOYEE GRIEVANCES

**SUPERSEDED:**

	Number	Date
Chapter	_____	_____
Page	_____	_____
	_____	_____
Appendix	NRC-4157	9/3/82

**TRANSMITTED:**

	Number	Date
TN	4100-77	_____
Chapter	_____	_____
Page	_____	_____
	_____	_____
Appendix	NRC-4157	9/18/84

**REMARKS:**

This appendix is revised to include, under "Grievable Matters," denial of a within-grade increase, to conform with the newly approved NRC Appendix 4130-C. Formerly, such denials were appealed through a separate procedure which closely paralleled the grievance procedure. This change reduces the number of separate parallel procedures. This revision is effective concurrent with the related change in Appendix 4130-C.

Additionally, Appendix 4157 is revised to state, in conformance with current practice, that a grievant's personal presentation to a step official will normally be via telephone in cases where the grievant and the official are in separate commuting areas.

U. S. NUCLEAR REGULATORY COMMISSION  
NRC MANUAL  
TRANSMITTAL NOTICE

CHAPTER NRC-4157 EMPLOYEE GRIEVANCES

**SUPERSEDED:**

	Number	Date
Chapter	NRC-4157	5/5/77
Page		
Appendix	NRC-4157	5/5/77

**TRANSMITTED:**

	Number	Date
TN	4100-58	
Chapter	NRC-4157	9/3/82
Page		
Appendix	NRC-4157	9/3/82

**REMARKS:**

This revision of Chapter and Appendix 4157 updates the material, incorporating changes resulting from new legislation (notably the Civil Service Reform Act), as well as changes suggested by increasing experience dealing with the current document. These procedures shall be used for all covered grievances filed with the first level official on or after November 29, 1982.

The sections listed below identify the most significant changes; in addition to those noted, many other minor and editorial changes have been made.

**A. General.**

1. The grievance is now required to be filed "formally" (that is, in writing) at all three levels.
2. The role of the Division of Organization and Personnel, and specifically of the Labor Relations Branch, is clarified. Additionally, the concept of regionalization has been added by indicating that in the regions, contacts with the Chief, Labor Relations Branch, should be through the Regional Personnel Officer.

**B. Chapter 4157.**

1. The definitions have been expanded and clarified. (See 4157-04.)
2. When the grievant's supervisor is not the appropriate first line official (for example, in a situation where an employee is grieving alleged incorrect rating for a vacancy in another office), the Chief, Labor Relations Branch, is given the responsibility for assisting in determining the appropriate first line official. (See 4157-043.)

3. The third level official may be at a level no lower than Division Director. (See 4157-045.)

C. Appendix.

1. General: The time limits for filing a grievance at each level have been clarified and made consistent.
2. The coverage and exclusions of the document have been expanded (incorporating changes instituted by the Civil Service Reform Act, for example), and clarified. (See Part A.)
3. NRC management's authority to disallow a grievant's representative is clearly stated in cases when there could be a conflict of interest, a conflict with the priority needs of the NRC, or a situation which might give rise to unreasonable costs to the Government. (See Part B.1.)
4. The circumstances under which a grievance may properly be rejected, and procedures for requesting a review of that rejection, are stated. (See Part G.)
5. Provision is made that the scope and issues of the grievance may not be expanded at the second and third levels unless those officials concur. (See Part H. 3. and I. 3.)

U.S. NUCLEAR REGULATORY COMMISSION  
NRC MANUAL

Volume: 4000 Personnel  
Part: 4100 Federal

PER

---

CHAPTER 4157 EMPLOYEE GRIEVANCES

---

4157-01 COVERAGE

This Chapter and Appendix define the responsibilities, requirements, and basic provisions which govern the NRC employee grievance procedure. However, since the negotiated grievance procedure is the exclusive procedure for resolving bargaining unit employee grievances which fall within its coverage, this Chapter and Appendix apply to bargaining unit employees with regard only to matters not covered by the negotiated procedure.

4157-02 OBJECTIVE

To provide an orderly method by which an employee may obtain timely administrative review and decision on a grievance, with freedom from interference, restraint, coercion, discrimination, or reprisal.

4157-03 RESPONSIBILITIES AND AUTHORITIES

031 The Executive Director for Operations grants exceptions to or deviations from the provisions of this Chapter and Appendix. Such exceptions or deviations are made a matter of record in the grievance file.

032 The Director, Office of Administration, decides whether the issues of a grievance warrant further processing despite untimeliness.

033 The Director, Division of Organization and Personnel:

- a. develops procedures, instructions and guides for the submission and review of grievances.
- b. through the Chief, Labor Relations Branch, provides staff assistance on the application of the provisions of this Chapter and Appendix throughout the NRC.
- c. provides final interpretations regarding the intent and applicability of this Chapter and Appendix.

Approved: September 3, 1982

- d. ensures that each new employee is given a copy, or an accurate summary of the substance, of this Chapter, and advises all employees of current changes.
- e. maintains a list of grievance review examiners to be furnished by the Chief, Labor Relations Branch, to reviewing officials when requested.

034 Managers and Supervisors:

- a. encourage informal resolution of employee dissatisfactions as they arise and at the lowest practicable supervisory level before they become formal grievances.
- b. act on formally submitted grievances from employees in accordance with the provisions of this Chapter and Appendix.

4157-04 DEFINITIONS

041 Grievance. A request by an employee, former employee, or group of employees for personal relief in a grievable matter of personal concern or dissatisfaction relating to the NRC employment of the employee(s) which is subject to the control of NRC management. (See Appendix, Part A, for grievable and nongrievable matters.)

042 Personal Relief. A specific remedy directly benefiting the grievant(s) which NRC management has power to grant; this may not include a request for disciplinary action to be taken against another employee, nor may it include a request for other action affecting another employee if such action would not directly benefit the grievant.

043 First Level Official. The official who acts on employee grievances at the first stage. The first level official is the line manager at the lowest organizational level who possesses the authority to resolve the grievance; normally, this is the employee's immediate supervisor. (In questionable cases, the advice of the Chief, Labor Relations Branch (LRB), should be sought.) First level official responsibility may be redelegated in writing (with copies to the grievant and the Chief, LRB) to an appropriate official who shall be empowered to speak for and commit the first level official.

044 Second Level Official. The official who is the line manager above the first level official, and who reviews that official's decision. In the case of a grievance when the appropriate first level official is an Office Director or Regional Administrator, there is no second level official stage, and the only level of review is by the appropriate third level official. Second level official responsibility may be redelegated in writing (with copies to the grievant and the Chief, LRB) to an appropriate official at an organizational level above that of the first level official, and who shall be empowered to speak for and commit the second level official.

045 Third Level Official. The official who issues final decisions on grievances. The third level official is a line manager above the second level official who is at a level no lower than Division Director. However, in cases when the appropriate first level official is an Office Director or Regional Administrator, the third level official is the line manager above that Office Director or Regional Administrator. The Chairman or the Chairman's designee is the line manager above staff office directors or chairmen of boards, panels, or committees who report to the Chairman or to the Commission; the Executive Director for Operations, or that official's designee, is the line manager above program or staff Office Directors and Regional Administrators who report to the Executive Director for Operations. Third level official responsibility may be redelegated in writing (with copies to the grievant and the Chief, LRB) to an appropriate official at an organizational level above that of the second level official (or Office Director/Regional Administrator as appropriate), and who shall be empowered to speak for and commit the third level official.

046 Grievance Review Examiner. A person designated by a third level official when appropriate to examine the facts of a grievance, to hold a hearing, and to make a written report of proposed findings and recommendations regarding resolution of the grievance to the third level official.

047 Chief, Labor Relations Branch (LRB). As used in this Chapter and Appendix, the Chief of the Labor Relations Branch of the Division of Organization and Personnel or his or her designee.

#### 4157-05 BASIC REQUIREMENTS

051 Applicability. This Chapter and its Appendix apply to all NRC non-bargaining unit employees; and to all NRC bargaining unit employees only insofar as they are grieving matters not within the coverage of the collective bargaining agreement with the employees' exclusive representative. These procedures shall be used for all covered grievances filed with the first level official on or after November 29, 1982.

052 Appendix 4157. Detailed policies and procedures for the resolution of grievances are contained in Appendix 4157.

#### 053 References.

- Atomic Energy Act of 1954, as amended (P.L. 83-703)
- Energy Reorganization Act of 1974, as amended (P.L. 93-438)
- President's Reorganization Plan No. 1 of 1980, as amended.
- Chapter 2101, "NRC Security Program"
- Chapter 4101, "NRC Personnel Management"
- Chapter 4108, "Employment"
- Chapter 4156, "Appeals from Adverse Actions"
- Chapter 4158, "Equal Opportunity in Government Employment"
- Chapter 4171, "Separations and Adverse Actions"
- FPM Chapter 771 "Agency Administrative Grievance System"
- Title 5 of Code of Federal Regulations
- Title 5 of United States Code



CONTENTS

	<u>Page</u>
A. APPLICABILITY.....	1
1. Grievable Matters.....	1
2. Nongrievable Matters.....	1
3. Grievances from Former Employees.....	3
B. RIGHTS OF EMPLOYEES, REPRESENTATIVES AND UNIONS.....	3
1. Employee Rights.....	3
2. Rights of Representatives.....	4
3. Employee Unions.....	4
C. ROLE OF THE PERSONNEL OFFICE.....	4
1. General.....	4
2. Regional Offices.....	4
D. PRE-GRIEVANCE RESOLUTION BY INFORMAL DISCUSSION.....	5
E. LEVELS IN THE GRIEVANCE PROCEDURE.....	5
1. First Level.....	5
2. Second Level.....	5
3. Third Level.....	5
F. FORMAL SUBMISSION TO FIRST LEVEL OFFICIAL.....	5
1. Time Limit.....	5
2. Submission of Grievance.....	6
3. Action by First Level Official.....	6
4. Decision of First Level Official.....	7
G. REJECTION OF GRIEVANCE.....	7
1. General.....	8
2. Rejection by First Level Official.....	8
3. Restating Grievance.....	8
4. Timeliness.....	8
5. Documentation.....	8
6. Review of Rejection.....	8

CONTENTS (Continued)

	<u>Page</u>
H. REVIEW BY THE SECOND LEVEL OFFICIAL.....	9
1. General.....	9
2. Time Limit.....	9
3. Substance of Grievance.....	9
4. Submission of Request for Review.....	9
5. Action by Second Level Official.....	9
6. Decision of Second Level Official.....	10
I. REVIEW BY THE THIRD LEVEL OFFICIAL.....	10
1. General.....	10
2. Time Limit.....	10
3. Substance of Grievance.....	11
4. Submission of Request for Review.....	11
5. Initial Action by Third Level Official.....	11
6. Appointment of Grievance Review Examiner.....	12
7. Review of the Record.....	12
8. Decision of Third Level Official.....	13
J. ACTION OF GRIEVANCE REVIEW EXAMINER.....	14
1. General.....	14
2. Initial General Planning.....	14
3. Hearing.....	14
4. Report.....	14
K. GRIEVANCE FILE.....	15
1. Establishment of File.....	15
2. Contents of File.....	15
3. Retention.....	15

**A. APPLICABILITY**

1. Grievable Matters. Except as in 2., below, employees may grieve matters that fall within the definition of "grievance," such as:
  - a. working conditions and work environment.
  - b. relationships with supervisors and other NRC employees.
  - c. application of NRC personnel policies to an individual employee or a group of employees.
  - d. admonitions and reprimands (see Chapter NRC-4171, "Discipline, Adverse Actions, and Separations").
  - e. denial of within-grade increase under NRC Appendix 4130-C.
  - f. allegations of discrimination not covered under the discrimination complaint system (Chapter NRC-4158), to include complaints based on marital status or political affiliation.
  - g. allegations of retaliatory actions taken for having expressed a differing professional opinion.
2. Nongrievable Matters. Employees may not grieve the following matters:
  - a. appeals from adverse actions (including removal or change to lower grade under NRC Chapter and Appendix 4151) or reduction-in-force actions (see Chapter NRC-4156, "Appeals from Adverse Actions").
  - b. complaints of alleged unfair labor practices (see the collective bargaining agreement with the employees' exclusive representative).
  - c. matters concerned with classification of positions, including determinations of noncompetitive career promotion potential of positions (see Chapter 4130, "Pay Administration and Position Evaluation").
  - d. alleged discrimination because of sex, age, race, color, religion, physical or mental handicap, or national origin (see Chapter 4158, "Equal Opportunity in Government Employment" and NRC Bulletin 4140, "Processing Complaints of Discrimination").
  - e. actions taken as a result of violation of the Hatch Political Activities Act (see Chapter NRC-4122, "Political Activity").

- f. determinations concerning eligibility for security clearance (see NRC Appendix 2101).
- g. rejection of a grievance in accordance with the procedures in Section G. of this appendix (see Section G.6. for provisions governing requests for review of such rejection).
- h. a suspension or removal under 5 U.S.C. 7532 (in the interests of national security).
- i. for bargaining unit employees, any matter which falls within the coverage of the collective bargaining agreement with the employees' exclusive representative.
- j. any matter which an employee is entitled to appeal to the Merit Systems Protection Board.
- k. a preliminary notice of a proposed admonishment, reprimand, or adverse action.
- l. the content of, or proposals to change, established NRC policies, standards and procedures.
- m. failure to be selected for promotion or the potential for promotion from a group of properly rated and certified candidates (however, alleged failures to follow promotion policies or procedures and alleged inequity in evaluating candidates are grievable).
- n. denial of access to records under the Privacy Act or the Freedom of Information Act.
- o. a performance appraisal of a member of the Senior Executive Service under Chapter NRC-4152.
- p. an action that returns an employee from the Senior Executive Service to the GG schedule during the 1-year probationary period, or for less than fully successful performance under 5 U.S.C. 3592.
- q. an action that terminates a temporary promotion and returns the employee to the position from which the employee was temporarily promoted or to one of no lower grade or pay.
- r. the substance of the performance elements (critical and non-critical) and standards of an employee's position which have been established in accordance with the requirements of Subchapter I of Chapter 43, 5 U.S.C. (see Chapter NRC-4151 and relevant provisions of the collective bargaining agreement).

- s. the granting of or failure to grant an employee a special achievement or SES performance award or high quality increase, or the adoption of or failure to adopt an employee suggestion or invention.
  - t. the termination under Chapter NRC-4109 (to be reissued as Part V of NRC Appendix 4108) of an employee serving a probationary or trial period.
  - u. the termination of a temporary employee on the not-to-exceed date of his or her appointment, or at any time for lack of work or funds.
  - v. the termination of an employee with an NRC Limited (Excepted) appointment who does not have return rights; or the return of an employee with an NRC Limited (Excepted) appointment who does have return rights, to his or her former position or one of no lower grade or pay (see NRC Appendix 4108 for a discussion of return rights).
3. Grievances from Former Employees. The processing of a grievance may be continued after an employee is separated from NRC and a grievance may be accepted from a former employee. However, a determination shall be made by the first level official, with the concurrence of the Chief, Labor Relations Branch (LRB), whether the personal relief sought by the former employee may be granted after termination of the individual's employment. If it is determined that such relief is not feasible or practical, the grievance shall be cancelled and the former employee notified in writing of the reasons.

## B. RIGHTS OF EMPLOYEES, REPRESENTATIVES AND UNIONS

1. Employee Rights. Each employee shall have the right to:
- a. obtain administrative review and decision on grievances, free from interference, restraint, reprisal, coercion, or discrimination.
  - b. meet with persons responsible for reviewing or acting upon his or her grievance.
  - c. be accompanied, represented, and advised at all stages of the grievance by an individual of his or her own choosing in presenting grievances, except that the Chief, Labor Relations Branch (LRB), may disallow the choice of an individual as a representative which would result in a conflict of interest or position, which would conflict with the priority needs of the NRC, or which would give rise to unreasonable costs to the Government.

- d. have a reasonable amount of official time to prepare and present grievances (if the employee is otherwise in duty status) as determined by the first, second, or third level officials.
  - e. have a hearing before, and have the facts relevant to a grievance examined by, a grievance review examiner, provided the grievance is accepted, is not in regard to the ratings made by a rating panel, and is timely filed at each applicable level.
  - f. present facts pertinent to a grievance, orally or in writing, or both.
  - g. examine all documents or other evidence considered in the resolution of a grievance. (Information which cannot be made available in the form in which it was received must be made available in a form which the employee and his or her representative can review or must not be used by management in the grievance procedure.)
2. Rights of Representatives. An employee who is designated by the grievant as his or her representative in a grievance action shall be assured freedom from restraint, interference, coercion, discrimination, or reprisal in connection with the presentation of the grievance. The representative shall also be granted a reasonable amount of official time for the purpose of preparing and presenting grievances, if the representative is otherwise in duty status. Such official time will be determined by the representative's supervisor.
3. Employee Unions. When the grievant is a bargaining unit employee, an employee union which has been granted exclusive recognition for the bargaining unit in which the grievant is located shall have the opportunity to be represented at formal discussions between the grievant and NRC officials which relate to the adjustment of the grievance. Nothing in this provision shall preclude employees from handling their own grievances, if they wish, or choosing their own representatives. An employee union may not initiate grievances under the provisions of this chapter.

C. ROLE OF THE PERSONNEL OFFICE/REGIONAL PERSONNEL OFFICER (RPO)

- 1. General. The Division of Organization and Personnel (O&P) shall assist in resolving employee dissatisfactions and grievances through consultation with supervisors, employees, and grievance review examiners, and through advising employees of their rights.
- 2. Regional Offices. In each situation in which this Appendix requires coordination with or concurrence of the Chief, LRB, employees and supervisors in Regional Offices shall contact the Regional Personnel Officer (RPO). The RPO shall be responsible for coordinating all appropriate actions with and obtaining required concurrences from the Chief, LRB.

**D. PRE-GRIEVANCE RESOLUTION BY INFORMAL DISCUSSION**

Whenever possible before a dissatisfaction reaches the formal grievance stage, there should be frank discussion between the employee and his or her supervisor or higher level of supervision. In no event should such discussions be protracted to the point that the office is disrupted and work efficiency impaired.

**E. LEVELS IN THE GRIEVANCE PROCEDURE**

There are a maximum of three levels within NRC for formally resolving a grievance, as follows:

1. First Level. The grievant submits a written grievance to the appropriate first level official, who shall examine the facts relevant thereto and give the employee a decision in writing.
2. Second Level. If the employee is dissatisfied with the first level official's decision, he or she may request, in writing, a review of that decision by the second level official; except that in the case of a grievance when the appropriate first level official is an Office Director or Regional Administrator, there is no second level official stage, and the only level of review is by the appropriate third level official.
3. Third Level. If the employee is dissatisfied with the second level official's decision, he or she may request, in writing, a review of that decision by the third level official. When requested by the employee in accordance with I.4.b., below or deemed necessary by the third level official, that official will appoint a grievance review examiner to examine the facts relevant to the grievance, hold a hearing, and recommend a solution to the third level official. The third level official informs the employee, in writing, of the final decision.

**F. FORMAL SUBMISSION TO FIRST LEVEL OFFICIAL**

1. Time Limit.
  - a. An employee may present a grievance concerning a continuing practice or condition at any time.
  - b. A grievance concerning a particular act or occurrence must be filed in writing with the appropriate first level official within 10 workdays after the occurrence, or within 10 workdays after the date the grievant should reasonably have been aware of the occurrence, unless such period is extended for good cause by the first level official. The date of the occurrence, or of the grievant's awareness of the occurrence, shall not be counted in computing timeliness.

- c. An example of a continuing practice or condition is a grievance concerning an ongoing condition of the work site; whereas the setting of an employee's grade and/or salary is an example of particular act or occurrence, not a continuing practice or condition.

2. Submission of Grievance.

- a. The grievant shall file the grievance with the appropriate first level official. (In the case of a grievance when the appropriate first level official is the Executive Director for Operations or a Commissioner, there is no second or third level official; and the first level official will perform the functions of the third level official, including appointing a grievance review examiner if appropriate.)
- b. The grievance at this stage shall be in writing and shall include:
  - (1) identification of the grievant.
  - (2) an explicit statement of the grievance, including sufficient detail to clearly identify the matter being grieved; and, if applicable, reference to the specific policy, regulation, or procedure alleged to have been violated.
  - (3) a brief summary of any relevant previous discussions with the grievant's supervisor(s) or other management officials.
  - (4) a statement of the personal relief desired.
  - (5) if desired, a request for a personal presentation to the first level official.
  - (6) the identity of the grievant's personal representative, if any.
  - (7) any other information the grievant believes to be pertinent to his or her grievance.
- c. At the time the employee submits a grievance to the first level official, the employee shall furnish a copy (through the RPO, as appropriate) to the Chief, LRB.

3. Action by First Level Official. Upon receiving the written grievance, the first level official shall:

- a. notify the Chief, LRB (through the RPO, as appropriate), of receipt of the grievance.



- b. examine the facts and circumstances relevant to the grievance.
- c. offer the employee an opportunity to make a personal presentation to the first level official to discuss the grievance. (If the grievant and the official are in different commuting areas, the personal presentation will normally be via telephone.)
- d. determine whether or not the grievance will be rejected in accordance with G., below.
- e. render a decision to the employee (see 4., below) within 10 workdays from receipt of the grievance, if practicable. If the first level official cannot render a decision within this time, the employee shall be notified in writing of the reasons for the delay and the approximate date a decision will be rendered.
- f. send to the Chief, LRB (through the RPO, as appropriate), a copy of all correspondence between the grieving employee and the first level official.

4. Decision of First Level Official.

- a. The decision of the first level official shall be in writing, shall be concurred in for procedural correctness (through the RPO, as appropriate) by the Chief, LRB, and shall include:
  - (1) if appropriate, a statement concerning the rejection of the grievance or parts of the grievance (in accordance with G., below) and the reasons for the rejection, and a notification of the employee's right to have the rejection reviewed in accordance with G., below.
  - (2) a decision on each of the personal remedies requested.
  - (3) the reasons upon which the decisions were based.
  - (4) the specific action(s) to be taken, if any, and the proposed effective date(s) thereof.
  - (5) unless the grievance was rejected in accordance with G., below, a notification of the employee's right to request a review of the decision by the second level official, the prescribed procedures and time limits for requesting such review, and the name of the second level official.
- b. A copy of the decision shall be furnished (through the RPO, as appropriate) to the Chief, LRB.

## G. REJECTION OF GRIEVANCE

1. General. Rejection of a grievance in accordance with the procedures in this section (which is not reversed in accordance with this section) shall terminate the grievance.
2. Rejection by First Level Official. After the employee has made any personal presentation which he or she requests, and with the prior concurrence (transmitted through the RPO, as appropriate) of the Chief, LRB, the first level official may reject the grievance for any of the reasons below.
  - a. failure to comply with time limits.
  - b. nonapplicability of this chapter and appendix (see A., above and 3., below).
  - c. failure to furnish sufficient detail to clearly identify the matter being grieved (see 3., below).
  - d. failure to specify the personal relief desired, or specifying a relief which does not meet the definition of "personal relief" (see 4157-042, above and 3., below).
3. Restating Grievance. If the grievance is rejected for reasons 2.b., 2.c., or 2.d.; above, the grievant shall be granted 5 workdays from the date of receipt of the notice of rejection to restate and resubmit the grievance to the first level official. Such restated grievance is subject to rejection as above if appropriate.
4. Timeliness. A grievance may be rejected at any level if the grievant fails to comply with the time limits specified in this appendix; prior to such rejection, the Chief, LRB, shall be notified (through the RPO, as appropriate).
5. Documentation. Any such rejection, the reasons for it, and the right to review in accordance with 6., below, shall be communicated in writing to the grievant, with copies (through the RPO, as appropriate) to the Chief, LRB, and to any management official(s) previously formally involved in the grievance.
6. Review of Rejection. If the grievant does not believe that the grievance was rejected on a proper basis, he or she may request in writing within 10 workdays following receipt of the notice of rejection that the Director, O&P, review the rejection. This request for review must state the reasons why the employee feels the rejection was improper. Unless the grievance was rejected on the basis of timeliness, the decision of the Director, O&P, in the matter shall be final. If the rejection was based on timeliness, the grievant may further appeal such rejection within 10 workdays following receipt of the decision of the Director, O&P, to the Director, Office of Administration. If that official decides that the issues of

the grievance warrant further processing despite untimeliness, the rejection of the grievance may be reversed, and the grievance may be processed in accordance with the procedures in this appendix.

#### H. REVIEW BY THE SECOND LEVEL OFFICIAL

1. General. An employee whose accepted grievance has not been resolved to his or her satisfaction by the decision of the first level official may request that the grievance and the first level official's decision be reviewed by the second level official.
2. Time Limit. The employee's request to the second level official shall be submitted within 10 workdays following receipt of the first level official's written decision, unless such period is extended for good cause by the second level official.
3. Substance of Grievance. The scope and issues of the grievance as presented to the first level official may not be amended unless the second level official agrees to such amendment.
4. Submission of Request for Review.
  - a. The request shall be in writing and include:
    - (1) the statement of the employee's grievance and of the personal relief requested which was submitted to the first level official.
    - (2) a copy of the first level official's decision.
    - (3) the specific reasons why the employee is dissatisfied with the first level official's decision.
    - (4) if desired, a request for a personal presentation to the second level official.
    - (5) the identity of the grievant's personal representative, if any.
    - (6) any other information the grievant believes to be pertinent to his or her grievance.
  - b. The employee shall furnish to the first level official and to the Chief, LRB (through the RPO, as appropriate), copies of the request for review at the time it is submitted to the second level official.
5. Action by Second Level Official. Upon receiving the written request for review, the second level official shall:
  - a. examine the facts and circumstances relevant to the employee's request, the grievance, and the first level official's decision.

- b. offer the employee an opportunity to make a personal presentation to the second level official to discuss the grievance. (If the grievant and the official are in different commuting areas, the personal presentation will normally be via telephone.)
- c. render a decision to the employee (see 4., below) within 10 workdays from receipt of the request for review, if practicable. If the second level official cannot render a decision within this time, the employee shall be notified of the reasons for the delay and the approximate date a decision will be rendered.
- d. send to the Chief, LRB (through the RPO, as appropriate), a copy of all correspondence between the grievant and the second level official.

6. Decision of Second Level Official.

- a. The decision of the second level official shall be in writing, shall be concurred in for procedural correctness (through the RPO, as appropriate) by the Chief, LRB, and shall include:
  - (1) a decision on each of the personal remedies requested.
  - (2) the reasons upon which the decisions were based.
  - (3) the specific action(s) to be taken, if any, and the proposed effective date(s) thereof.
  - (4) a notification of the employee's right to request a review of the decision by the third level official, the prescribed procedures and time limits for requesting such review, and the name of the third level official.
- b. A copy of the decision shall be furnished to the first level official and (through the RPO, as appropriate) to the Chief, LRB.

I. REVIEW BY THE THIRD LEVEL OFFICIAL

- 1. General. An employee whose accepted grievance has not been resolved to his or her satisfaction by the decision of the second level official may request that the grievance and the second level official's decision be reviewed by the third level official.
- 2. Time Limit. The employee's request to the third level official shall be submitted within 10 workdays following receipt of the second level official's written decision, unless such period is extended for good cause by the third level official.

3. Substance of Grievance. The scope and issues of the grievance as presented to the second level official may not be amended unless the third level official agrees to such amendment.
4. Submission of Request for Review.
  - a. The request shall be in writing and include:
    - (1) the statement of the employee's grievance and of the personal relief requested submitted to the first level official.
    - (2) a copy of the first and second level officials' decisions.
    - (3) the specific reasons why the employee is dissatisfied with the second level official's decision.
    - (4) if desired, a request in accordance with b., below either for a personal presentation to the third level official, or to have a hearing with a grievance review examiner, but not both.
    - (5) the identity of the employee's personal representative, if any.
    - (6) any other information the employee believes to be pertinent to his or her grievance.
  - b. The employee may also request, and has a right to, either a personal presentation to the third level official or a hearing with a grievance review examiner, but not both; except that the employee does not have a right to a hearing with a grievance review examiner if the subject of the grievance is the ratings made by a rating panel in a merit selection case. If the employee does not request a personal presentation or a hearing at this time, he or she may not make such request at a later date. (If the grievant and the third level official are in different commuting areas, any personal presentation requested will normally be via telephone.)
  - c. The employee shall furnish to the first and second level officials and (through the RPO, as appropriate) to the Chief, LRB, copies of the request for review at the time it is submitted to the third level official.
5. Initial Action by Third Level Official. Upon receiving the request for review, the third level official shall:
  - a. independently review the employee's request, the grievance, and the first and second level officials' decisions.

- b. offer the employee an opportunity personally to appear before the third level official to discuss the grievance if requested by the employee in accordance with 4.b., above.
- c. select a grievance review examiner if the employee has requested and has a right to a hearing in accordance with 4.b., above or if a hearing is deemed desirable by the third level official.
- d. send to the Chief, LRB (through the RPO, as appropriate), a copy of all correspondence between the grievant and the third level official.

6. Appointment of Grievance Review Examiner.

- a. When the services of a grievance review examiner are required (see 5.c., above), the examiner shall be selected by the third level official from a list furnished (through the RPO, as appropriate) by the Chief, LRB. This list will include available judges within the Atomic Safety and Licensing Board Panel (ASLBP). If the employee has requested the services of an examiner, this selection shall normally be made within 10 workdays after receiving the employee's request. No examiner shall be directly involved in the issue(s) giving rise to the grievance, nor shall any examiner be employed under the same Office Director as is the grievant. Examiners may be employees of other Federal agencies or of the private sector.
- b. Upon selecting the examiner, the third level official shall notify the employee in writing of the name, and of his or her right to challenge the selection for reasonable cause. Any such challenge shall be submitted in writing to the third level official within 3 workdays after receipt of the notice of appointment. If the third level official sustains the challenge, that official shall select within 5 workdays, subject similarly to challenge for reasonable cause, a new examiner. If the third level official rejects the challenge, he or she shall, within 5 workdays of receipt of the employee's challenge, notify the employee in writing of his or her rejection of the challenge and the reasons therefor.
- c. See J., below for action required of the grievance review examiner.

7. Review of the Record.

- a. The third level official shall review the entire record, including, if a grievance review examiner is used, the examiner's report of proposed findings of fact and recommendations and all documents and testimony relied upon therein.

- b. After the examiner has made his or her report and recommendations, but prior to the third level official's decision, new information bearing on the grievance may be submitted to the third level official only if such new information was not available earlier. Upon the receipt of such information, the third level official shall determine whether or not the information was available earlier; if so, it shall be rejected. If the information was not available earlier, the third level official shall determine whether or not the information would alter his or her decision. If the third level official determines that it would alter the decision, he or she shall either direct the grievance review examiner to reopen the hearing in order to consider it; or shall direct the grievance review examiner to consider the information (without reopening the hearing) after providing both parties the opportunity to present briefs on the information to the grievance review examiner. If the third level official determines that it would not alter the decision, the new information must not be considered by him or her in rendering his or her decision.
- c. Hearings reopened as above shall be conducted in accordance with J., below.

8. Decision of Third Level Official.

- a. A decision on a grievance shall be rendered by the third level official, if practicable, in not more than 10 workdays following receipt of the request for review if no grievance review examiner is used; or of the findings and recommendations of the grievance review examiner if one is used. This time limit may be extended by the third level official for good cause upon notification to the employee of the reasons for the delay and the approximate date a decision will be rendered.
- b. The decision shall be in writing, shall be concurred in for procedural correctness (through the RPO, as appropriate) by the Chief, LRB, and shall include:
  - (1) a decision on each of the personal remedies requested
  - (2) the reasons upon which the decisions were based.
  - (3) the specific action(s) to be taken, if any, and proposed effective date(s) thereof.
- c. A copy of the decision shall be furnished to the first and second level officials and (through the RPO, as appropriate) to the Chief, LRB.

**J. ACTION OF GRIEVANCE REVIEW EXAMINER**

1. General. The examiner shall be responsible for:
  - a. examining all relevant facts of the grievance.
  - b. holding hearings.
  - c. keeping a record of examinations.
  - d. making written proposed findings of fact.
  - e. furnishing recommendations, in writing, proposing a solution or solutions to the third level official within 30 calendar days after the date of acceptance of the examiner position, except as additional time is authorized by the third level official for good cause.
2. Initial General Planning. The planning phase of the review shall be initiated by the examiner within 5 workdays, if possible, following acceptance of the examiner position. In planning the review, the examiner will:
  - a. obtain copies of these instructions, and orientation in their application, from the Chief, LRB (via the RPO, as appropriate).
  - b. hold a prehearing conference with management's advisor (see NRC Appendix 4156), the grievant, and his or her representative (if any), for the purpose of:
    - (1) identifying the issues involved in the grievance.
    - (2) stipulating facts or to the admissibility of evidence.
    - (3) determining a preliminary list of witnesses to be called.
    - (4) discussing schedules and any other matters relative to the hearing.
3. Hearing. The grievance review examiner shall conduct hearings in accordance with the guidance contained in NRC Appendix 4156. That Appendix governs such matters as attendance, witnesses, presentation of evidence, stipulations and hearing records.
4. Report.
  - a. The examiner's written report of proposed findings of fact and recommendations to the third level official shall contain:
    - (1) statement of purpose of the examination.



- (2) issues considered.
  - (3) analysis of evidence.
  - (4) proposed findings of fact.
  - (5) conclusions.
  - (6) recommendations.
- b. The original of any record of the hearing shall be attached to the report.
  - c. A copy of the report of proposed findings and recommendations of the grievance review examiner shall be furnished to the employee, to his or her representative, to the first and second level officials, and (through the RPO, as appropriate) to the Chief, LRB.

#### K. GRIEVANCE FILE

1. Establishment of File. The Chief, LRB, is responsible for establishing a grievance file whenever an employee presents a formal grievance. These files are part of the system of records NRC-8, "Employee Appeals, Grievances and Complaint Records," and are available for inspection and copying in accordance with the Privacy Act.
2. Contents of File. This file shall contain, as a minimum:
  - a. the written grievance.
  - b. The written decisions of the first level official, and, as appropriate, of the second and third level officials.
  - c. the summary or transcript of any proceedings before a grievance review examiner.
  - d. the grievance review examiner's proposed findings and recommendations, if appropriate.
  - e. documentary evidence considered in resolving the grievance.
3. Retention. The grievance file shall be retained for a period of 3 years from the date of the settlement of the grievance.