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NRC MANUAL

BULLETIN

NO. 4156 - 172

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 4156.
2. Generic Change: In 032 and throughout, references to the Director, Division of Organization and Personnel, should be construed as references to the Director, Office of Personnel.



Paul E. Bird, Director
Office of Personnel

U. S. NUCLEAR REGULATORY COMMISSION
NRC MANUAL
TRANSMITTAL NOTICE

CHAPTER NRC-4156 APPEALS FROM ADVERSE ACTIONS

SUPERSEDED:

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Chapter <u>AEC-4156</u>	<u> </u>
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TRANSMITTED:

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TN <u>4100-29</u>	<u> </u>
Chapter <u>NRC-4156</u>	<u>6/22/78</u>
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Appendix <u>NRC-4156</u>	<u>6/22/78</u>

REMARKS: This chapter and appendix contain the following significant changes and clarifications from the previous document:

1. Appeal Officers. Office Directors were previously designated as appeal officers for all employees under their jurisdiction. This chapter provides, instead, that the appeal officer will be the next higher level of management above the "deciding official," i.e., the individual who issued the letter of decision.
2. Levels of Appeal. The previous document permitted two levels of appeal: (1) to the appropriate Office Director, and (2) to the Executive Director for Operations. Consistent with policies elsewhere in the Federal Government, this revision provides for a single level of appeal.
3. Committees. "Appeal Advisory Committees" of agency employees were previously used to conduct investigations, hold hearings and make recommendations to appeal officers. These functions will now be performed by Appeals Examiners who are qualified under the Standard for Examiners, as specified by the Civil Service Commission and who may come from outside of NRC.
4. Allegations of Discrimination. New provisions in 053 provide guidance on the disposition of allegations of discrimination which are raised in connection with appeals.

The provisions of this chapter and appendix apply to all appeals received in writing on or after the date of approval of this document.

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NRC APPENDIX 4156 APPEALS FROM ADVERSE ACTIONS

SUPERSEDED:

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Appendix	<u>NRC-4156, 5-6</u>	<u>6/22/78</u>

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Appendix	<u>NRC-4156, 5-6</u>	<u>6/22/78</u>
	<u>6</u>	<u>9/17/90</u>

REMARKS:

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

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CHAPTER 4156 APPEALS FROM ADVERSE ACTIONS

4156-01 COVERAGE

This chapter and appendix apply to appeals within NRC from adverse actions taken under Chapter 4171, "Separations and Adverse Actions," and to the alleged denial of any right or benefit which denial would constitute an adverse action. This chapter also provides guidance on appeals taken directly to the Federal Employee Appeals Authority of the U.S. Civil Service Commission. (Note: This chapter may not apply if the appellant is a member of a bargaining unit and the adverse action is grievable under a negotiated grievance procedure as specified in a collective bargaining agreement.) This chapter does not apply to grievances (see Chapter 4157) except for Appendix Part IV, Standards and Guides for the Conduct of Hearings. This chapter does not apply to position evaluation (see Chapter 4130); failure to receive within — grade increases (see Chapter 4130); failure to be selected for promotion (see Chapter 4157); actions taken as a result of violation of the Hatch Political Activities Act (see Chapter 4122); or suspension of access authorization (see Chapter 2101).

4156-02 OBJECTIVES

021 To provide an orderly method by which an employee may appeal an adverse action and obtain prompt administrative review and decision, and timely correction of improper adverse actions.

022 To implement the Atomic Energy Act of 1954, as amended, which requires that "...The Commission shall make adequate provision for administrative review of any determination to dismiss any employee;..." (section 161d.).

023 To assure that situations giving rise to appeals shall be resolved at the lowest practicable level and, wherever possible, on an informal basis.

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4156-03 RESPONSIBILITIES AND AUTHORITIES

031 General. Chapter 4171 authorizes Directors of Offices (and, as appropriate, the Executive Director for Operations and the Commissioners) to effect adverse actions and to redelegate adverse action authority to designated levels of subordinates. This chapter provides that any appeal from an adverse action will be resolved at the next higher level of management above the "deciding official," i.e., the individual who issued the letter of decision. Accordingly, managers and supervisors immediately above deciding officials are designated as appeals officers and are authorized and directed to make final decisions on appeals directed to them under the provisions of this chapter and appendix.

032 The Director, Division of Organization and Personnel:

- a. develops procedures, instructions and guides for the submission of appeals.
- b. provides staff assistance on the application of the provisions of this chapter and appendix throughout the agency.
- c. advises employees and supervisors with regard to the processing of appeals.
- d. maintains a list of qualified appeal examiners for selection by appeal officers.
- e. in accordance with Public Law 89-380, initiates action to provide back pay to an employee when the final decision on the employee's appeal is that the adverse action was unjustified or unwarranted.
- f. establishes and maintains appeal files.

033 Appeal Examiners:

- a. conduct hearings and make written recommendations to the appeal officers by whom selected.
- b. administer oaths and affirmations.

4156-04 DEFINITIONS (for purposes of this chapter and appendix)

041 Appeal. A written request by an employee (to whom this chapter and appendix apply) for reconsideration of an adverse action.

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042 Adverse Action. An action by which an employee is involuntarily separated (including separations by reduction in force), suspended, furloughed, or reduced in grade, or compensation. In addition, a reduction in rank constitutes an adverse action in the case of a veteran preference eligible.

043 Appeal Officer. Those persons so identified in 031, above.

044 Appeal Examiner. An individual selected by an appeal officer to conduct a hearing, as appropriate, and make recommendations regarding resolution of an appeal to the appeal officer.

045 Veteran Preference Eligible. An employee who meets the requirements for veteran preference of Chapter 211 of the Federal Personnel Manual and who:

- a. has completed at least 1 year of current continuous service in NRC; or
- b. is serving in NRC under an appointment which was given without a break in service and the previous appointment was in the same line of work, and:
 - (1) served in the previous employment under a nontemporary appointment in a competitive position and either completed a probationary or trial period under that appointment or has completed in both positions a combined service equivalent to a probationary or trial period or to 1 year of current continuous employment; or
 - (2) served in the previous employment under any type of appointment in an excepted position and either completed 1 year of continuous employment under that appointment or has completed in both positions a combined service equivalent to 1 year of current continuous employment.

4156-05 BASIC REQUIREMENTS

051 Applicability. This chapter and its appendix apply to all NRC employees who possess appeal rights based upon Chapter 4171, Separations and Adverse Actions, and Chapter 4170, Reduction in Force.

052 Appendix 4156. Detailed policies and procedures for the resolution of appeals and the conduct of hearings are contained in Appendix 4156. See Exhibit A, "NRC Appeals System," for a graphic outline of how the system works. NOTE: This Exhibit is intended only to provide a general overview of the appeals system. The Exhibit should not

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be used for identifying employees' rights or in determining procedural requirements.

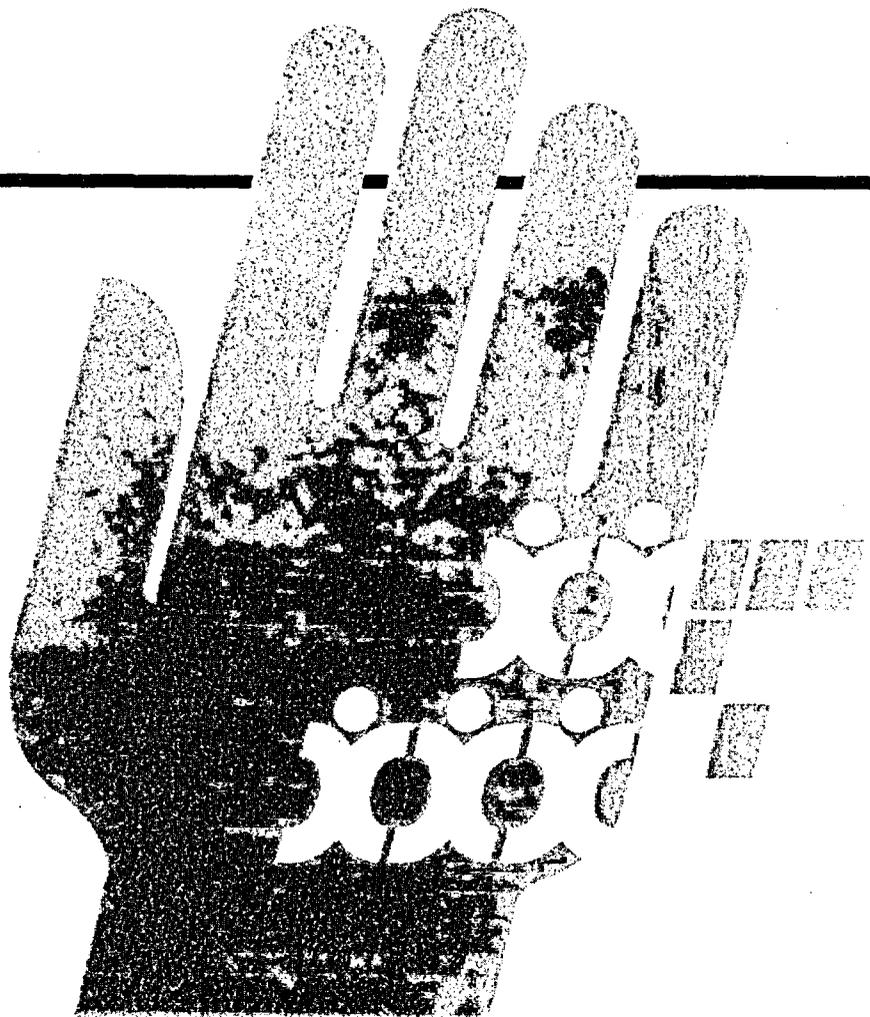
053 Allegations of Discrimination. Allegations of discrimination raised during adverse actions will be processed in accordance with the facts and circumstances of each case. Such allegations will normally be processed as follows:

- a. As indicated in Appendix 4171, Part V, any allegation of discrimination which is raised during the course of an adverse action (i.e., prior to final decision) is resolved under Chapter 4158, Equal Opportunity in Government Employment, after final decision on the proposed adverse action and before action on any appeal or review.
- b. If, in connection with any appeal to NRC under Part II of Appendix 4156, any allegation of discrimination is raised at any point, the appeal officer will immediately cease processing the appeal and request from the Director, Office of Equal Employment Opportunity, a decision on whether the allegation may be accepted as a complaint under Chapter 4158, Equal Opportunity in Government Employment. If the allegation is accepted as a complaint, the appellant will be advised by the appeal officer that the allegation will be processed under Chapter 4158 and that, pending an NRC decision on the allegation of discrimination, all action on the appeal will be suspended. When the NRC decision on the complaint of discrimination has been made, a copy will be included in the appeal file and processing of the appeal will be resumed.

054 Exceptions. Exceptions or deviations from the provisions of this chapter and appendix may be granted by the Executive Director for Operations or the designee of that official. Exceptions or deviations authorized will be made a matter of record in the appeal file.

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Division of Organization and Personnel **Appeals from Adverse Actions**



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PART I
RIGHTS AND PRINCIPLES

A. EMPLOYEE RIGHTS.

NRC employees shall have the right to:

1. freedom from restraint, interference, coercion, discrimination, or reprisal in connection with or resulting from requesting or participating in an appeal.
2. appeal adverse actions within NRC or, if they have received a written notice of reduction in force, or if they are veteran preference eligibles, choose to appeal directly to the Federal Employee Appeals Authority within the prescribed limits.
3. appear before, and appeal personally to, the appeal officer, upon written request.
4. have representatives of their own choosing who may accompany, represent, and advise them in preparing and presenting appeals.
5. a reasonable amount of official time as determined by the appeal officer to prepare and present appeals.
6. upon request, have appeals investigated through hearings before an appeal examiner and confront and question any witness heard by such examiner.
7. present evidence on their own behalf, through witnesses, or by documents.
8. examine all evidence contained in the appeal file.
9. request and, as agreed upon, obtain a verbatim transcript or written summary of appeal examiner hearings on their appeals.

B. BASIC PRINCIPLES.

1. Adherence to Procedures. It is essential that established procedures be adhered to in processing appeals. A violation of an agency regulation properly based upon statutory authority

can establish the basis for a claim for pay by an employee adversely affected.

2. Role of the Personnel Office. The Personnel Office shall assist in the informal resolution of employee appeals through mutual agreement between the parties concerned. Personnel representatives are also available for consultation with, and advice to, supervisors and employees alike. Similar assistance is also available to all those concerned with the preparation, consideration, and disposition of formal appeals.
3. Right of Representation. An employee may designate, in writing, a representative of the employee's own choosing to assist and represent him or her in the preparation and presentation of appeals. This right may be exercised at any stage of the appeal procedure.
4. Use of Official Time. An employee and his or her representative, if an NRC employee, shall be allowed a reasonable amount of official time, as determined by the appeal officer, for preparing and presenting an appeal.
5. Effect of Appeal. An appeal will not stay or otherwise delay the effective date of an adverse action. However, if the appeal is sustained, corrective action as described below must be taken.
6. Corrective Action.
 - a. Restoration. If an appeal officer restores an employee to his or her former grade or rate of pay or to an intermediate grade or rate of pay as the result of a decision that the appealed action was unjustified or unwarranted, the restoration shall be effective as of the date of the improper action.
 - b. Back Pay. If an administrative determination or the final decision of an employee's appeal is that the adverse action was unjustified or unwarranted, upon the correction of such action the NRC shall, for the purpose of making the employee whole, compute pay and restore pay, allowances, differentials, and employment benefits in accordance with law (Public Law 89-380 and CSC Regulation, Part 550, Pay Administration (General), subpart H, Back Pay (FPM Supplement 990-1)).
7. Appeal File. A record of the employee's appeal shall be established and contain all pertinent documents relating to the appeal, including:

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- a. the notice of proposed appealable action.
- b. the employee's reply, if any, together with affidavits or other documents submitted.
- c. the notice of the decision.
- d. the employee's appeal to the appeal officer.
- e. the notice of appointment of the examiner and the granting of a hearing or the reasons for not granting a hearing.
- f. the verbatim transcript or written summary of the hearing.
- g. all documents received in evidence at such hearing.
- h. the report and recommendation of the examiner.
- i. the written decision of the appeal officer.

C. DESIGNATION OF NRC APPEAL OFFICER.

1. Normally, the notice of adverse decision will identify the name and title of the NRC official to whom an appeal may be addressed. In cases where such identification has not been made, the employee may request the Director, Division of Organization and Personnel, to designate the appropriate appeal officer.
2. The appeal officer will be the official at the next higher level of management above the official who decided to effect the action and normally should be the individual to whom the latter reports. ~~Appeal officer responsibility may not be re delegated and may only be exercised by a deputy when, for example, the deputy is acting for the principal in his or her absence.~~
3. Appeals from decisions made by the Directors of staff offices which report to the Commission will be taken by the Chairman, as will appeals from decisions made by the Executive Director for Operations. The Executive Director for Operations will take appeals from decisions made by the Directors of offices which report to him, including the three statutory offices. Decisions made by members of the Nuclear Regulatory Commission, including the Chairman, are not appealable to a higher level; however, in any such case the employee has the right to a

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hearing and the member of the Commission will reconsider the decision based upon the recommendations of an appeal examiner.

PART II

SUBMISSION OF APPEALS TO NRC

A. TIME LIMIT.

The appeal must be submitted by the employee to the appeal officer within fifteen (15) calendar days following receipt of the deciding official's written decision, unless such period is extended for good cause by the appeal officer.

B. FORM AND CONTENT.

The appeal must be in writing and include:

1. reasons why the employee is appealing the decision.
2. remedial action requested.
3. request for the appointment of an appeal examiner, if desired.
4. any other information the employee wishes to include which the employee believes to be pertinent to the appeal.

C. ACCEPTANCE OF APPEALS.

1. Appeals submitted in accordance with the provisions of this chapter shall be accepted, and continued if in process, on behalf of an employee after his or her death, or involuntary separation or involuntary retirement, provided there is the possibility of corrective action.
2. An appeal shall not be accepted from, or on behalf of, an employee after voluntary resignation or retirement. An appeal in process shall be discontinued as of the date the employee voluntarily resigns or voluntarily retires.
3. An appeal concerning a specific action, issue, or charge shall not be accepted, or, if initiated, processing will not be continued within NRC, if the U.S. Civil Service Commission or the Federal Employee Appeals Authority accepts an employee's appeal on the same specific action, issue, or charge, or if the action, issue or charge is grieved or appealed under provisions of a collective bargaining agreement.

D. INITIAL ACTION BY APPEAL OFFICER.

1. General. Upon receiving an appeal, the appeal officer:
 - a. reviews the deciding official's decision and employee's appeal therefrom carefully, with particular reference to procedural adequacy and consistency with governing regulations.
 - b. offers the employee an opportunity to appear before and appeal personally to the appeal officer.
 - c. appoints an appeal examiner upon request of the employee or when the appeal officer deems it desirable.

2. Appointment of Appeal Examiner.
 - a. In implementation of the above, an appeal examiner shall normally be selected by the appeal officer within five (5) working days after receiving employee's request therefor or on the appeal officer's own initiative, to conduct a hearing and make a recommendation regarding resolution of the appeal to the appeal officer.
 - b. The appeal examiner normally should be qualified as an Administrative Law Judge and shall be selected by the Appeal Officer from a list furnished by the Chief, Labor Relations. This list will include available judges from within the Atomic Safety and Licensing Board Panel (ASLBP). No examiner shall be involved in the issue giving rise to the appeal, nor shall any examiner be employed under the same Office Director as is the appellant.
 - c. Upon selecting the examiner, the appeal officer shall notify the employee in writing of the name of the examiner and of the employee's right to challenge the selection for reasonable cause. Such challenge shall be submitted in writing to the appeal officer within three (3) working days after receipt of the notice and should include a specific statement of the grounds upon which the challenge is based. If the appeal officer sustains a challenge to the examiner's appointment, he or she shall appoint, subject to further challenge for reasonable cause, a new examiner;

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otherwise, the appeal officer shall notify the employee of the rejection of the challenge and the reasons therefor.

E. ACTION OF APPEAL EXAMINER.

1. The examiner should contact the parties within five (5) working days following appointment to plan the hearing and discuss relevant issues and procedures. A hearing will be held in all cases when an examiner has been appointed unless both parties and appeal examiner agree that a hearing is unnecessary.
2. The examiner's activity is limited to consideration of the specific facts of the appeal as they relate to the employee personally, i.e., the specific reasons as stated in the advance notice of proposed appealable action and the employee's response to each, or the specific steps taken in a reduction-in-force action.
3. The examiner may request the presence of witnesses and is authorized to administer oaths and affirmations to witnesses appearing in any hearing held.
4. The examiner shall be responsible for:
 - a. investigating all relevant facts of the appeal, including a review of the merits of the deciding official's decision.
 - b. holding hearings, as appropriate.
 - c. keeping a record of investigations.
 - d. making written findings of fact.
 - e. making written recommendations to the appeal officer, normally within thirty (30) calendar days after the date of appointment, except as additional time is authorized by the appeal officer.
5. The examiner's report and recommendation to the appeal officer shall contain, as a minimum:
 - a. statement of purpose of the investigation.
 - b. issues considered.

- c. analysis of evidence.
- d. findings of fact.
- e. conclusions.
- f. recommendations.

The original of any hearing record shall be attached to the report.

- 6. The report and recommendation of the appeal examiner to the appeal officer normally will be released to the employee and to the official who made the decision on the adverse action.

F. APPEAL OFFICER'S DECISION.

1. Review of Appeal Examiner's Report.

- a. The appeal officer shall review the entire appeal file, including report and recommendation of the appeal examiner, and all documents and testimony. The appeal officer shall limit his or her consideration to those points bearing upon the specific reasons for the adverse action contained in the notice of proposed action to the employee and the appellant's reasons for protesting the deciding official's decision.
- b. After the examiner's report is submitted to the appeal officer, but prior to the appeal officer's decision, new and significant evidence bearing on the appeal may be submitted to the appeal officer by either party if that party was without fault in not ascertaining its existence at an earlier date. Upon the acceptance of such new evidence, it shall be considered by the appeal officer in rendering a decision. The appeal officer may ask the appeal examiner to consider the new evidence if he or she determines that additional investigation by the examiner would be of further assistance in making a decision.

2. Decision.

- a. A decision on an appeal shall be rendered to the employee by the appeal officer, if practicable, in not more than five (5) working days following receipt of the findings and recommendations of the appeal examiner.

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- b. The decision shall be in writing and include:
- (1) identification of records considered by the appeal officer in making a decision.
 - (2) a statement to the effect that consideration has been given to all the evidence in the case.
 - (3) a decision on each of the issues presented by the appeal.
 - (4) the reasons upon which the decision is based.
 - (5) specific action to be taken, if any, and effective date thereof.
 - (6) a notification to the employee of further appeal rights, if any.
- c. A copy of the decision shall be furnished to the deciding official.

PART III

APPEALS TO THE CIVIL SERVICE COMMISSION

A. LEGAL PROVISIONS.

Under the authority of Sections 12 and 14, respectively, of the Veterans' Preference Act of 1944, as amended, provision is made for appeals to the U.S. Civil Service Commission's Federal Employee Appeals Authority:

1. by all employees who have received a written notice of reduction in force and who believe that the action is contrary to the applicable regulations of the Civil Service Commission (part 351, book III, FPM Supplement 990-1); and
2. by veteran preference eligibles who have received a decision to take an adverse action of discharge, suspension for more than thirty (30) days, furlough without pay, or reduction in grade or rank or compensation for reasons other than reduction in force.

B. TIME LIMIT.

An employee may appeal directly to the Civil Service Commission at any time after he or she receives a notice or decision, but not later than fifteen (15) calendar days after the action has been effected by NRC. At its discretion the Civil Service Commission may extend this time limit.

C. HOW TO APPEAL.

The appeal shall be in writing and signed by, or at the personal direction of, the employee. The appeal should be addressed to the Federal Employee Appeals Authority Office having jurisdiction as listed in FPM Supplement 752-1.

D. CONTENT OF APPEAL.

A veteran preference eligible appealing a decision to take an adverse action shall set forth the reasons in writing for contesting the adverse action, with offer of proof and such pertinent documents as the employee is able to submit. An employee appealing a reduction-in-force notice shall include in the appeal:

1. the employee's full name, address, and telephone number.
2. the agency and organization unit or installation which is taking the action.
3. the title of his or her position and grade or salary rate.
4. nature and date of the proposed action.
5. date of the notice (or enclose a copy of the notice).
6. the employee's reasons for believing the proposed action is improper.

E. APPEAL FROM FEDERAL EMPLOYEE APPEALS AUTHORITY DECISION.

The employee may appeal from the Federal Employee Appeals Authority's initial decision. Such an appeal may be filed with the Appeals Board Review, U.S. Civil Service Commission, Washington, DC 20415.

PART IV

STANDARDS AND GUIDES FOR THE CONDUCT OF HEARINGS

A. APPLICABILITY OF THIS PART.

These standards and guides will be used by appeal examiners in conducting hearings under this chapter and will also be used by grievance review examiners in conducting hearings under Chapter 4157 and Appendix 4157, Employee Grievances.

B. PURPOSE OF THE HEARING.

The examiner is charged with investigation of the facts, including the conduct of hearings, with regard to the issues of the grievance or appeal and as related specifically to the employee. The hearing provides an orderly means for the examiner to assure the rights of the employee. Hearings will be held in all cases when an examiner has been appointed unless both parties and the Appeal Examiner agree that a hearing is not necessary.

C. DISCOVERY OF DOCUMENTS.

1. In an adverse action appeal, the appellant has the right to examine only those documents which the deciding official plans to introduce at the hearing in support of his or her decision.
2. In a grievance, the grievant has the right to examine only those documents relied upon by the key line official in making his or her decision on the grievance. Such right of examination is limited exclusively to evidence relied upon by the key line official in that official's capacity as such.
3. The rights to discovery of documents set forth in 1. and 2., above, are exclusive. However, no provision in this appendix shall abridge the rights of any person under the Privacy Act and the Freedom of Information Act.

D. PREPARATION FOR THE HEARING.

The examiner shall:

1. obtain copies of these instructions and orientation in their application from the Division of Organization and Personnel.

2. identify the issues, including a review of the grievance or appeal to ascertain the presence of substantive procedural defects which, in the examiner's opinion, may invalidate an NRC action before further steps are taken.
3. identify the employee's representative, if any; management's adviser; and witnesses the employee and management desire to have testify or present evidence at the hearing.
4. consider the lists of witnesses submitted by the parties and decide who will be called as witnesses.
5. establish date, time, and place of hearing. The first session of hearing normally should be not more than fifteen (15) working days after appointment of the examiner.
6. notify the employee and the management official as to the date, time and place of the hearing. Normally, at least three (3) days' notice should be given.

E. CONDUCT OF THE HEARING.

1. Nature of the Hearing. Examiners shall not be bound by technical rules applicable to judicial proceedings, but shall be guided by such rules to the extent found necessary to protect the rights of the employee and the interests of the Government. The hearing is not a trial and shall not be allowed to take on the characteristics of court proceedings. The hearings should bring out the facts pertinent to matters in dispute so that the examiner can make findings and recommendations.
2. Function of the Examiner. The examiner controls the conduct of the hearing to assure, insofar as possible, that information presented is material and pertinent to the grievance or to the appeal and the purpose of the hearing. The examiner requires all present to meet appropriate standards of conduct in keeping with the aims of the hearing. The examiner may also recess the hearing to permit the employee to confer with his or her representative or to appoint a new representative where appropriate to the proper conduct of the hearing. The hearing may be terminated if the employee fails to pursue the grievance or the appeal in a timely or reasonable manner, or both, or refuses to correct the conduct of his or her representative after a request to do so.
3. Attendance. If requested by the employee, the examiner will limit the attendance at the hearing to the employee, the

employee's representative, the appropriate management official and the latter's adviser, one witness at a time, and a stenographer. During presentation or disclosure of classified information, the examiner shall permit only persons having access authorization to be present.

- a. Employee's Representative. The employee is responsible for arranging for personal representation, if desired. In presenting or assisting in the employee's grievance or appeal, the representative shall be allowed to produce evidence in the employee's behalf through witnesses and documents and examine evidence which has been submitted, and examine witnesses.
- b. Management's Adviser. The key line official in a grievance and the deciding official in an adverse action or other personnel action on appeal will be provided an attorney from the Office of the Executive Legal Director to act as an adviser and representative in the hearing. This adviser shall also provide legal advice to any witness called by management to support its position in the matter under review. The adviser's function in the hearing is to assist in presenting facts pertaining to the appeal. He or she shall be allowed to submit evidence and examine evidence which is offered or submitted by the employee; to call and examine witnesses; and to cross-examine witnesses called by the employee.
- c. Witnesses. A person who is to be a witness at the hearing may not attend the hearing until called to testify. If the hearing is open to the public, the witness may attend the hearing once his or her testimony has been completed. Employees who are made available as witnesses shall be considered to be in a duty status while they are serving in that capacity if they would otherwise be in a duty status at the time.

4. The Hearing.

- a. Opening of Hearing. The examiner:
 - (1) introduces and identifies for the record all parties present.
 - (2) states the purpose and nature of the hearing.
 - (3) defines the employee's grievance or appeal.

- (4) describes the ground rules, including information on furnishing the employee with a copy of the record of the hearing.
- (5) describes the general order in which the employee, the management official and/or their representatives or advisers and witnesses will be heard.
- (6) secures stipulations from the parties as to which facts are not in dispute, dictates them into the record, and secures the agreement of both parties that the stipulations have been correctly stated.
- (7) allows each party to make an opening statement which indicates what each expects to show during the hearing.

b. Presentation of Evidence.

- (1) The examiner provides the employee and the management official with a full opportunity to present relevant and material evidence (personally or through representatives) by testimony, written statement, affidavits and other documents. The employee and the management official or their representatives or advisers are permitted to examine evidence and to confront and examine any witness heard by the examiner. Witnesses will give oral evidence under oath or by affirmation and the examiner gives such weight to the testimony as the circumstances warrant. The examiner administers oaths and affirmations.
- (2) Questioning of witnesses and presentation of evidence are to be conducted in a manner to bring out the facts in as straightforward a manner as possible. Witnesses may be examined and cross-examined.

c. Rules of Evidence.

- (1) Legal rules of evidence used in courts of law are not applicable. The examiner shall exercise discretion so as to exclude irrelevant or unduly repetitious testimony. Charges or reasons upon which an appealed action is based do not, in themselves, constitute evidence. The evidence may be in the form of testimony of witnesses and introduction of

pertinent documents and materials. Both parties shall present all evidence that will clarify the issues and confine their evidence to matters directly related to the case. Opening and closing statements made by the employee, management official and their representatives or advisers in presenting their respective cases shall not be considered as testimony.

- (2) The examiner is responsible for controlling the conduct of the hearing and for determining what testimony is pertinent and acceptable. Evidence shall be considered irrelevant if it does not pertain specifically to the appealable action or items contained in the appeal. However, wide latitude concerning relevancy may be exercised. The examiner shall determine the extent to which issues already discussed will be reheard. He or she may summarize the facts agreed to by both parties and cite issues which remain in conflict and which are to be clarified.
- (3) Testimony should be clearly identified as being based either upon hearsay or personal knowledge. If a witness expresses an opinion regarding professional or technical matters, the weight attached to the evidence shall take into consideration the qualifications of the witness.
- (4) Any material to which the employee and the management official are not permitted access is not admissible as evidence. Both parties have the right to examine and cross-examine, as witnesses, persons whose statements are admitted as documentary evidence, where applicable. Where this is impracticable, the reasons should be reflected in the record of proceedings and the examiner, if he or she deems it necessary or if requested by either party, should seek written clarification or additional information from the person furnishing such information.

5. Close of Hearing. At the close of the hearing, the examiner:
 - a. inquires of the employee whether he or she has any additional material to present. If the employee responds

in the affirmative, the examiner takes such action as is necessary to resolve the matter.

- b. informs the employee of his or her right to review the hearing record, and of the time allowed for submitting corrections.
 - c. informs the employee that the reviewing official (in the case of a grievance) or the appeal officer renders a decision, not the examiner.
6. Hearing Record. In accordance with the agreement with the employee, either a verbatim transcript of the hearing or a summary record is produced. A copy of this record is made available to the employee, upon request, at no cost. Copies of this record remain the property of the Nuclear Regulatory Commission and shall be returned upon termination of any grievance or appeal made by the employee. The examiner permits a reasonable, but specific, time for the employee and the management official to request corrections to the records. The examiner, however, is the final judge of what corrections are acceptable, and informs the employee and/or the management official of the decision.

EXHIBIT A: NRC APPEALS SYSTEM

APPEALS FROM ADVERSE ACTIONS

NRC APPENDIX 4156

NOTE: This flow chart is intended only to provide a general overview of the NRC Appeals system. It should not be used as a guide in identifying employees' specific rights or in determining procedural requirements. Please note, also, that this flow chart does not include reference to other avenues of review which, depending on the circumstances, may be available to the employee. These include filing an appeal to the Federal Employees Appeal Authority; a grievance under a negotiated collective bargaining agreement; a discrimination complaint; or an unfair labor practice charge.

