

~~ADMINISTRATIVE - INTERNAL USE ONLY~~

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Category: 7 - Management OPR: IG

Title: AR 7-6 GRIEVANCE RESOLUTION

REVISION SUMMARY: 15 October 2003

This regulation supersedes HR 7-6, dated 20 January 1993.

HR 7-6 incorporates FR 7-6, is rewritten and redesignated *AR 7-6. This revision reflects changes to grievance-related timelines and procedures and provides clarification with respect to the appeals process.

*This redesignation is part of an ongoing conversion to one set of Agency regulations for both headquarters and the field.

HR 7-6 and FR -7-6 are hereby rescinded.

Because this regulation has been extensively revised, boldfaced text has not been used.

This regulation was written by the Office of Inspector General,

(b)(3)

6. GRIEVANCE RESOLUTION

SYNOPSIS. This regulation sets forth the basic rules applicable to the presentation and handling of grievances.

- a. POLICY.** This regulation is applicable to grievances filed after 15 October 2003. The Agency will strive to create and maintain conditions of employment and a working environment conducive to effective accomplishment of the Agency's mission and employees' job satisfaction. In furtherance of these goals, it is Agency policy that employees have the opportunity to seek resolution of job-related grievances free from restraint, coercion, or reprisal and that the Agency provide for the prompt, competent, and just consideration of such grievances. Insofar as possible, the resolution of grievances will be accomplished informally, at the lowest appropriate level, by line supervisors, managers, component grievance counselors, and the employees concerned. Nothing in this regulation is intended to delay or preclude the separation of an Agency employee in accordance with AR 13-8.

b. DEFINITIONS

- (1) A "grievance," subject to the limitations in paragraph (2) immediately below, is a formal written request by an employee, as defined in paragraph (4) below, for remedial action concerning work-related disputes, including career problems, management action, working conditions, or other matters that affect the employee and that are subject to control by Agency management. The filing of a grievance raises no presumption of improper action or wrongdoing by any party to the grievance. The Assistant Inspector General (AIG) for Investigations is authorized to make a finding regarding whether a matter constitutes a grievance under this regulation. A finding by the AIG for Investigations as to whether a matter is properly the subject of a grievance is a final Agency determination and may not be reviewed or appealed further within the Agency.
- (2) Grievances will **not** include:
 - (a) Claims of illegal discrimination as set forth in AR 9-3 or harassment as set forth in AR 9-2, or denials of reasonable accommodation under AR 9-4. Employees should be alert to the differences in the processes contained in these regulations, including differing time limits for filing a complaint regarding those matters;
 - (b) The content of published Agency-wide regulations and policy;
 - (c) Any judgment of a board or panel in ranking or selecting employees for promotion or assignment on the basis of merit, unless the grievant can demonstrate with clear and convincing evidence that the record under consideration was significantly deficient or that the process was not carried out as set forth in AR 20-16 and AR 20-21;
 - (d) Any denial or recommended denial by an Agency panel or board of an employee claim, as set forth in AR 20-33, AR 30-8, and AR 45-6;
 - (e) Any recommendation of a Personnel Evaluation Board for disciplinary actions or termination, as set forth in AR 13-5;
 - (f) Any nonadoption of an employee suggestion, as set forth in AR 20-38;
 - (g) Any disapproval of an honorary or discretionary award, as set forth in AR 20-37;
 - (h) Any recommendation of the CIA Retirement Board as set forth in AR 20-50;
 - (i) The terms of any mediated agreement that an employee is a party to resulting from participation in the Alternative Dispute Resolution (ADR) Program; or
 - (j) Any other matter, such as performance appraisals as set forth in AR 20-20, for which a channel other than the Grievance System has been established by statute or regulation for adjudication and appeal.

- (3) "Directorate" in this regulation includes all Directorates, MSOs, and the DCI Area. References to Deputy Directors and MSO Chiefs include a designated member of the E Career Service Board other than its Head.
 - (4) An "employee" for the purpose of this regulation is a U.S. citizen who is a current staff or contract employee; or a former staff or contract employee who meets the timing requirements for presenting a grievance, as set forth in this regulation; or, to the extent that the matter being grieved falls under the Agency's jurisdiction, an individual on detail to the Agency. This regulation does not apply to: foreign nationals appointed under the authority of the DCI to serve as nonstaff employees of the U.S. Government; or others who are not appointed employees to the Federal service (including independent contractors and nonstaff proprietary employees). Administrative issues raised by such foreign nationals and other nonappointed individuals, including applicants for Agency employment, will be handled within the chain of command of the Headquarters components charged with responsibility for managing the activities with which these individuals are associated. The highest level of appeal for such issues will be the head of the Headquarters component under which the foreign national or nonappointed individual serves; for example, the chief of an area division of the Directorate of Operations, the Director of the Foreign Broadcast Information Service, or the Chief, Information Services Infrastructure.
 - (5) "Grievance counselor" refers to the employee(s) within a component designated by the head of the component to perform the grievance-related functions outlined in paragraphs c(1), c(2)(b) and e(3) below.
 - (6) The title of "grievance officer" is reserved for the officer in each directorate who is responsible for the directorate's grievance system and all its related aspects, such as conducting inquiries; counseling; educating employees, supervisors, and managers about the grievance system; keeping official records; and, in coordination with OIG, training other directorate grievance personnel. No other Agency officer will carry the title of grievance officer.
 - (7) The "parties to the grievance" are the grievant or grievants and the Agency employee(s) who are the subjects of the grievance.
 - (8) A "supervisor" is an employee responsible for writing the Performance Appraisal Reports (PAR[s]) of one or more subordinates.
 - (9) A "manager" is an employee responsible for writing the PAR(s) of one or more supervisors.
- c. **PROCESS.** Within 90-calendar days after learning of a matter that is properly the subject of a grievance has taken place, an employee must initiate attempts to reach an informal resolution within the appropriate component. If an informal resolution is not achieved within 90-calendar days, the employee may exercise the option to file a formal grievance. For example, if an employee discovers today that a memorandum with incorrect and possibly

damaging information was put into his or her personnel file two months ago, the employee has 90-calendar days from today--the date he or she first becomes aware that something harmful has occurred--to initiate attempts to informally resolve the matter within the component. If no agreement can be reached within 90 days from today's date, a formal grievance can be filed. Both the informal attempt to resolve the problem and the filing of the formal grievance must be completed within 90-calendar days from the date the employee learned of the action giving rise to the grievance.

- (1) **INFORMAL RESOLUTION.** Employees are required to first seek resolution of work-related disputes informally within their components. When work-related disputes concern matters under the jurisdiction of components in another directorate, employees may consult responsible officials in those components. As part of the 90-day informal resolution process and before employees file a formal grievance, grievance officers and grievance counselors should inform employees about the ADR Program Office and the Agency Ombudsman, and encourage them to consider whether their work-related disputes may be resolved through mediation.

- (2) **FORMAL RESOLUTION**

- (a) **General.** If informal resolution, in accordance with paragraph c(1), is unsuccessful, the employee may, within 90-calendar days of the date the employee first becomes aware of the action giving rise to the grievance, submit a formal grievance in writing, using Form 4437, Official Grievance Package (see paragraph d(7) below), to the component grievance counselor in accordance with the component's grievance procedures. This submission must provide sufficient details to make clear the nature and basis of the grievance, the individuals against whom it is brought, the specific actions taken to resolve the matter informally, and the specific relief requested. Failure of the grievant to file a written grievance within the 90-calendar-day period, even if the informal resolution has not been completed, eliminates the right of the employee to pursue the grievance. Time limits may be extended by mutual agreement of the parties involved. An employee may file a grievance initially at any of the three levels in the process: the employee's component grievance counselor, the directorate grievance officer, or the AIG for Investigations. The recipient may refer the grievance for resolution to the lowest possible level.
- (b) **Component.** Within 60-calendar days of receiving a written grievance, unless extended by agreement of the parties to the grievance and the head of the component, the component grievance counselor will review the grievance, gather and record all relevant information, and provide the head of the component with a written report of findings, conclusions, and recommendations for a component decision. The component grievance counselor will inform the parties to the grievance in writing of the component head's decision. Should the component head not reach a decision within this 60-calendar-day period or should the component's response be subject to appeal as set forth in paragraph d(4) below, any of the parties may appeal the case in writing through the directorate grievance officer to the relevant Deputy Director or MSO Chief. The appeal must be made within 15 days of receipt of the component

response or within the expiration of the 60-calendar-day period. Parties to a grievance within the DCI Area may appeal the case in writing through the DCI Area grievance officer to the Deputy Executive Director.

- (c) **Directorate or MSO.** Within 15-calendar days of the receipt of an appeal by the Deputy Director, or MSO Chief, or accepting a grievance directly, unless extended by agreement of the directorate grievance officer and the appealing party, the directorate grievance officer will review the written record of the grievance as received from the component and decide whether to (1) recommend accepting the component's decision, if one was made, (2) remand the matter to the component for further information or action within a specified time limit, or (3) conduct a separate inquiry within a reasonable time limit specified by the directorate grievance officer. If the directorate grievance officer cannot resolve the matter without the Deputy Director's or MSO Chief's involvement, the directorate grievance officer will provide the Deputy Director or MSO Chief a written report of his or her findings and conclusions with recommendations for a final decision. Within the DCI Area, the Deputy Executive Director will make the final directorate-level decision. The directorate grievance officer will inform the parties to the grievance in writing of the Deputy Director's or MSO Chief's decision.
- (d) **Office of Inspector General.** Within 15-calendar days of receiving an appeal to the Executive Director (EXDIR) or accepting a grievance directly, unless extended by agreement of the AIG for Investigations and the appealing party, the AIG for Investigations will review the written record of the grievance and decide whether to (1) recommend accepting the Deputy Director's or MSO Chief's decision, if one was made, (2) remand the case to the directorate grievance officer for further information or action within a specified time limit, or (3) conduct an investigation within a reasonable time limit specified by the AIG for Investigations. If the AIG for Investigations cannot resolve the matter without the EXDIR's involvement, the AIG for Investigations will provide the IG with a written report of the investigative findings and conclusions with recommendations for the IG's submission to the EXDIR. The AIG for Investigations will inform the parties to the grievance in writing of the EXDIR's decision.
- (e) **Executive Director**
- (1) Should the final decision by the Deputy Director or MSO Chief be subject to appeal as set forth in paragraph d(4) below, or should the Deputy Director or MSO Chief not reach a decision within 20-calendar days of receiving the directorate grievance officer's recommendation, any party may appeal the matter to the EXDIR in writing, through the IG, within 15 days of receipt of the response or expiration of the specified time period.
 - (2) If the AIG for Investigations cannot resolve the matter in accordance with (d) below, the EXDIR will render, within 30-calendar days of receiving the IG's recommendations, a decision whether to (1) accept the IG's recommendation, (2)

remand the case to the IG for further information or action within a specified time limit, or (3) impose a different decision.

- (3) A decision by the EXDIR concerning resolution of the grievance is a final Agency determination and may not be reviewed or appealed further.

d. IMPLEMENTATION PROVISIONS

- (1) **Privacy Channels.** To ensure that employees serving overseas or at field sites in the United States have full, unimpeded access to the grievance system, the Office of Information Services Infrastructure will maintain privacy channels for the communication of grievance-related messages to any of the directorate grievance officers and to the IG. Access to this channel will be limited to parties to the grievance, the directorate grievance officers, and designated employees of the Office of Inspector General (OIG).
- (2) **Interviews.** The parties to the grievance will be interviewed at the first grievance resolution level. At each subsequent level of the process, except at the level of the EXDIR's review of IG recommendations, the appealing party will be interviewed. Other interviews shall be conducted as the official responsible for the investigation deems appropriate.
- (3) **Representative.** A grievant, with the approval of the appropriate grievance official at each level of the process, may designate in writing an Agency staff employee who agrees to assist the grievant in resolving the grievance. The grievance official may disqualify this representative because of a conflict of interest or position, or a conflict with the needs of the Agency. The grievant may appeal such disqualification to the AIG for Investigations, whose decision is final. Only Agency staff employees may serve as representatives.
- (4) **Appeals.** Any of the parties to a grievance may appeal the decision concerning resolution of the grievance by a component head, MSO Chief or Deputy Director to the next higher level. The appeal must be in writing and provide a clear and compelling justification for the directorate grievance officer or the AIG for Investigations to accept the case on appeal. Justifications for appeals may include that the underlying decision was based on improper or inadequate investigative procedure, that management failed to reach a decision within prescribed timelines, or that the decision is contrary to the evidence.
- (5) **Records.** The responsible officer at each level of the grievance process (component grievance counselor, directorate grievance officer, and AIG for Investigations) will ensure that formal records are maintained including all original materials, reports, and information relating to the processing of a grievance in accordance with the Agency-wide system of record keeping for grievance files developed by the Agency Information Management Officer. When a grievance is appealed, the next level will take immediate

possession of the grievance file, which will include all original written records relating to the grievance.

- (6) **Access to Grievance Report.** The parties to the grievance are entitled to read the written grievance report produced at each level of the grievance process, at a time determined to be appropriate to the matter by the official responsible for the investigation. In those situations in which a grant of confidentiality is requested, the identification of the source will be protected from disclosure to the parties and any representative unless the official responsible for the investigation determines that the needs of the investigation require disclosure. In such cases, the person requesting confidentiality shall be notified in advance of the intended disclosure. However, such grants of confidentiality will not preclude disclosures required or permitted by provisions of applicable law. The parties to the grievance are not entitled to read or review the record of the grievance other than the grievance report(s) and Form 4437.
- (7) **Form 4437, Official Grievance Package.** This form is comprised of a cover sheet, grievance routing sheet, and component grievance record. The grievance routing sheet, as part of the Official Grievance Package, accompanies the component grievance record throughout the process and is annotated with the dates the grievance is initially submitted and passed from one level to the next. These dates will constitute the official basis for determining the various time periods provided in this regulation. Form 4437 may be obtained from component grievance counselors, directorate grievance officers, and the OIG.
- (8) **Expiration of Time Limits.** Failure of an individual to seek informal resolution of a work-related dispute, file a formal grievance or appeal it to a higher level within the time limits provided in this regulation eliminates the individual's right under this regulation to pursue that grievance. At any point in the grievance process, the parties to the grievance and the official responsible for the investigation may, by mutual agreement, extend the time limit, or any of the parties to the grievance may appeal to the AIG for Investigations for an extension of time. Any party to a grievance who has lost the right to appeal a grievance may, based on exceptional cause, appeal the expiration of the appeal time limit to the next level deciding authority.
- (9) **Remand.** When a grievance is remanded to a lower level for further information or action, the officer making that decision will determine a reasonable time for delivery of the additional information or completion of the action.
- (10) **Resolution.** If at any stage of the formal grievance process the grievant is satisfied with a resolution, he or she will execute a written statement to that effect, thereby closing the matter. The employee may reopen the matter only by presenting new evidence that was not previously discoverable by the employee in the exercise of due diligence and that materially affects the basis for resolution, or by presenting evidence of noncompliance with a previous determination or of reprisal for pursuing resolution of a grievance.
- (11) **Cancellation of Grievance.** A grievance shall be canceled:

- (a) At the grievant's written request;
- (b) Upon retirement or termination of the grievant's employment with the Agency, unless the relief sought by the employee can be granted after retirement or termination of employment; or
- (c) For lack of timely action by the grievant. Grievance counselors; directorate grievance officers; or the AIG for Investigations may cancel an employee's grievance if the employee fails to furnish information requested in a timely manner required for the advancement of the grievance. Employees will be notified of such cancellation in writing.

e. RESPONSIBILITIES

- (1) Employees must make every reasonable effort to resolve disputes informally. Employees who use the formal grievance system must do so in compliance with the procedures and time limits set forth in this regulation and by the component and directorate dispute-resolution and grievance procedures, and must not press frivolous, capricious, or harassing complaints. Employees have the initial responsibility to present the facts and circumstances that they believe support their grievances and to articulate clearly the relief sought.
- (2) Supervisors and managers are expected to address work-related disputes in a timely, fair, and effective manner and to cooperate fully in the resolution of grievances.
- (3) Upon request, directorate grievance officers and component grievance counselors will provide advice on all grievances within their jurisdiction to their Deputy Directors, MSO Chiefs, component managers, supervisors, and employees. Directorate grievance officers and component grievance counselors will counsel employees and handle grievances with the goal of achieving prompt, equitable resolution of problems as informally as possible. Directorate grievance officers and component grievance counselors are responsible for developing thorough reports and objective recommendations designed to resolve disputes without bias toward employees or managers. Directorate grievance officers and component grievance counselors will have access, through the AIG for Investigations, to all Agency information necessary to conduct a full inquiry and produce such reports. Directorate grievance officers also are responsible for providing grievance resolution oversight and guidance throughout their directorates.
- (4) Deputy Directors and MSO Chiefs will establish grievance procedures consonant with the provisions of this regulation. Deputy Directors and MSO Chiefs also are responsible for ensuring timely, fair, and effective resolution of grievances brought to them by their grievance officers and ensuring that their grievance officers are in a position to perform their functions properly and have sufficient resources to carry out all grievance activities effectively. Deputy Directors and MSO Chiefs will appoint a new directorate grievance

officer within 10-calendar days of the departure of an incumbent grievance officer to ensure that there is no significant disruption to the grievance process.

- (5) The AIG for Investigations will oversee the Agency-wide grievance system. This official will ensure that decisions are implemented properly and that grievance resolution training is provided for grievance counselors and officers.

f. PENALTIES

- (1) **For Reprisal.** Any employee who inflicts any form of reprisal on another employee for pursuing resolution of work-related issues, or for discussing, planning to file, filing, or pursuing a grievance is subject to administrative action as Agency management may deem appropriate, to include oral warning, letters of reprimand, suspension without pay, and, in the most extreme cases, termination of employment.
- (2) **For Abusing the Grievance System.** Any employee who files frivolous, capricious, or harassing complaints may be subject to administrative action as Agency management may deem appropriate, to include oral warnings, letters of reprimand, suspension without pay, and in the most extreme cases, termination of employment.
- (3) **Failure to Implement Agreed Decisions.** Any employee who fails to implement an agreed resolution of a grievance within a reasonable time may be subject to administrative action as Agency management may deem appropriate.
- (4) Requests for suspension or termination because of reprisal or abuse of the grievance system will be prepared in accordance with AR 13-8 and forwarded to the Chief Human Resources Officer, with all pertinent documents attached.