



Approved by: Juan Williams, Commissioner	Policy Number: 12-005 (Rev. 04/19)
Signature: 	Supersedes:
Application: All Preferred Service Employees and All Agency Appointing Authorities	Effective Date: October 2, 2012
Authority: T.C.A. § 4-3-1703, T.C.A. § 8-30-103, T.C.A. § 8-30-104, T.C.A. § 8-30-105, T.C.A. § 8-30-108, T.C.A. § 8-30-318, T.C.A. § 8-30-320	Rule: Chapter 1120-11

Appeals Procedure for Preferred Service Employees

Pursuant to Tenn. Code Ann. § 8-30-318, preferred service employees who have successfully completed the required probationary period may file an appeal regarding the application of a law, rule, or policy by an agency to the following employment actions: **dismissal, demotion, or suspension**. Executive service employees are at-will and are not eligible to participate in the appeal process.

Procedural Steps of Appeal

There are three (3) steps of the appeals process for preferred service employees. Appointing authorities are responsible for ensuring all preferred service employees are aware of the appeal process. Step I of the appeals process includes an informal discussion between the employee (“complainant”), the supervisor who issued the discipline, and the agency’s appointing authority or designee. After the discussion, a written decision will be issued. Step II of the appeals process includes a review of all relevant documents and information (including but not limited to, photos, video footage, social media posts, etc.) and written decision by the Commissioner of the Department of Human Resources (“Commissioner”). Step III, the final step of the appeals process, is an administrative hearing before the Board of Appeals.

For purposes of calculating days subject to this process, all days are considered calendar days (excluding State holidays) pursuant with Tenn. Code Ann. §§ 8-30-407, 15-1-101. In addition, where a due date falls on a Saturday, Sunday, or State holiday, the appeal/decision is due by the end of next regular working day.

Timeline for Filing a Complaint

At Step I of the appeals process, a complainant who desires to appeal an action based on an agency’s alleged violation of a specific law, rule, or policy with regard to complainant’s dismissal, demotion, or

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suspension, may complete a Step I appeal form or otherwise notify the agency of their intent to appeal. A completed appeal form, or other written notification, along with any relevant documentation, must be submitted to the appointing authority/designee no later than fourteen (14) calendar days after the date complainant received written notice of employment action, if hand delivered. If notice of the employment action was sent via mail, three (3) calendar days are added to the time frame. The completed form, or written request, must identify the specific law, rule, or policy allegedly violated by the agency or department, or otherwise explain why the disciplinary action was unjustified.. If complainant does not submit the completed form or written notification and relevant documentation in a timely manner, the complainant waives the right to appeal.

If the complainant desires to proceed to Step II of the appeals process, the complainant has a maximum of fourteen (14) calendar days from the date of receipt of the appointing authority's written decision, if hand-delivered, or three (3) additional calendar days if mailed to complete and submit a Step II appeal form or written notification and relevant documentation. If, however, the appointing authority does not issue a written decision within fifteen (15) calendar days after the appointing authority receives the complaint, the complainant may appeal to the Commissioner by filing a complaint in accordance with Step II. In the event the appointing authority fails to issue a decision by the fifteen-day timeframe, the fourteen-day period which an employee may appeal to Step II begins the day after the decision would otherwise be due.

To commence Step III of the appeals process, either the complainant or the agency may submit a completed Step III appeal form or written notification along with any relevant documentation within fourteen (14) calendar days of receipt of written decision by the Commissioner of Human Resources.

Step I

The first step of the appeals process commences once the complainant has timely submitted the Step I appeal form or written notification and any relevant documentation to the appointing authority. The appointing authority may appoint a designee to serve as his or her representative throughout Step I of the appeal process. The appointing authority or designee shall first determine whether the appeal has been filed timely and whether the matter is appealable. After review, the appointing authority or designee shall set a date for a face-to-face discussion between the complainant and the employee's supervisor who issued the discipline. The date for the discussion shall be communicated in writing to the complainant no later than five (5) calendar days after the receipt of the appeal. The appointing authority or designee has discretion to reschedule the discussion upon complainant's request. The appointing authority or designee may also conduct any independent investigation relevant to the appeal if necessary prior to the discussion or at any time prior to issuing a decision. If independent information is collected by the appointing authority or designee, the complainant shall receive a copy of the information as soon as practicable. If the additional information obtained is confidential, the complainant may view the information, but may not receive a copy. After the complainant has received or viewed additional

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information, he/she may provide a written statement to the appointing authority or designee in support or opposition of the additional information within three (3) calendar days. If the complainant has additional relevant information, he/she can submit it with the written statement.

The appointing shall provide, in advance of the discussion, a copy of any and all documents or other evidence in the appointing authority's possession that is relevant to the discussion, including, but not limited to, reports, videos, and recordings. During the face-to-face discussion, the complainant has the opportunity to present any information to indicate why the discipline issued was in error. The complainant must present information indicating the law, rule or policy allegedly violated, or otherwise explain why the disciplinary action was unjustified, by the agency in issuing the discipline. This discussion shall be informal. The presence of observers is at the discretion of the appointing authority. If necessary, the appointing authority may seek information from the observers, but such observers may not advocate on behalf of the agency or the employee. If more than one (1) representative of the agency, excluding the hearing officer, is in attendance, then the complainant may have a non-lawyer representative participate in the appeal. The appointing authority shall issue a written decision to the complainant using their preferred method of communication (as designated on the Step I appeal form or written notification) no later than fifteen (15) calendar days after receipt of complainant's completed Step I appeal form or written notification. In reaching a decision, the appointing authority or designee may consider information obtained as a result of the investigation, the documents presented during the Step I appeal, independent information obtained during or after the Step I face-to-face discussion, and any additional information provided by the complainant in response. The appointing authority shall take the complainant's response to the additional information into consideration prior to issuing the Step I decision, unless doing so would cause the appointing authority to violate the fifteen (15) calendar days to respond as allowed by statute. The appointing authority may ultimately uphold, overturn, reduce, or amend the disciplinary action. When appropriate, the appointing authority may also reinstate leave and award back pay. If leave is reinstated or an award of back pay is granted, the agency must submit the award to the Department of Human Resources Agency Resource Center for approval within three (3) calendar days. If back pay is awarded, the agency shall issue payment no later than thirty (30) calendar days from date of award. Any corrective action granted to the complainant cannot go back more than thirty (30) calendar days prior to filing the Step I appeal.

If the appointing authority does not issue a written decision within fifteen (15) calendar days of receiving the complaint, the complainant may appeal to the Commissioner by filing a complaint in accordance with Step II. The complainant may also proceed to Step II if the complainant disagrees with the appointing authority's written decision. In either case, the employee's fourteen (14) calendar day timeframe in which to appeal to Step II begins the day after receipt of the Step I decision or the day after a Step I decision would otherwise be due, whichever is earlier.

Step II

The second step of the appeals process begins when a complainant submits a completed Step II appeal form or written notification to the Commissioner of the Department of Human Resources. The form is to be fully completed by the complainant. If the agency appointing authority issued a written decision, the appeal form, along with any relevant documentation, shall be submitted to the Commissioner no later than fourteen (14) calendar days after the date of the appointing authority's written decision (or the date it would have otherwise been due), if hand-delivered, or three (3) additional calendar days if issued via mail. The Commissioner may appoint a designee to serve as his or her representative throughout Step II of the appeal process.

The Step II appeal form and relevant documentation shall be submitted to the Department of Human Resources using the contact information below by one of the following methods: U.S. certified mail, hand-delivery, fax, or e-mail (scanned and submitted electronically).

Department of Human Resources
ATTN: Step 2
Sixteenth Floor, William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue
Nashville, TN 37243
Fax: (615) 401-6848
E-mail: DOHR.Step2Appeals@tn.gov

Once the completed Step II appeal form or written notification and relevant documentation is received by the Commissioner, the Commissioner will complete an initial review within five (5) calendar days to make a determination regarding timely submission of Step II information as well as review whether the complainant identified a specific law, rule, or policy allegedly violated by the agency, or otherwise explain why the Step I decision was in error. Upon completion of the initial review, the Commissioner will notify both complainant and agency whether the Step II form and documentation was timely submitted and whether complainant is able to proceed with an appeal. The notification will detail the timeframes for submitting additional documentation to the Commissioner. After a thorough review of all relevant documentation provided from Step I and submitted by the complainant and the agency, the Commissioner may conduct an independent investigation if necessary to make a well-informed decision. If independent information is collected by the Commissioner, the complainant shall receive a copy of the information as soon as practicable. If the additional information obtained is confidential, the complainant may view the information. After complainant has received or viewed additional information, they may respond to the Commissioner or the appointing authority via written statement in support or opposition of the additional information within three (3) calendar days. If the complainant has additional relevant information, he/she can submit it with the written statement.

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After a thorough review of all relevant documentation obtained has been conducted, the Commissioner will prepare a decision letter, which will be delivered to complainant and agency no later than thirty (30) calendar days from the date the Commissioner received the completed Step II form and documentation. The Commissioner shall take the complainant's response to additional information into consideration prior to issuing a Step II decision, unless doing so would cause the Commissioner to violate the thirty (30) calendar days to respond as allowed by statute. The decision letter will be issued to the complainant using his/her preferred method of communication (as designated on Step II appeal form). The decision letter will be sent to the agency's appointing authority, general counsel of the agency, human resources director, and Step I designee by email. The decision shall include the Commissioner's determination as to whether the appointing authority's decision will stand, be remanded, overturned, reduced, or amended, and may also include reinstatement of leave or back pay if appropriate. Any corrective action granted may not go back more than thirty (30) days prior to complainant's submission of completed Step I appeal form.

Either the complainant or agency may appeal to the Board of Appeals if one of the following occurs: (1) DOHR does not timely issue a decision letter, (2) the complainant disagrees with the Commissioner's decision, or (3) the agency disagrees with Commissioner's decision.

Step II of the appeals process is the final administrative step for a complainant appealing a suspension of one (1) or two (2) days.

Step III

The third and final step of the appeals process is initiated by submission of a completed Step III appeal form or written notification and all relevant documentation, including the Step II decision letter, to the Board of Appeals (sometimes "Board") no later than fourteen (14) calendar days after the date the complainant or the agency receives the decision letter (or fourteen (14) calendar days after the date it would have otherwise been due) from the Commissioner if hand-delivered, or three (3) additional calendar days if the decision letter was issued via mail. The form is to be fully completed by the complainant or complainant's representative, or the agency's appointing authority or agency representative acting on the appointing authority's behalf.

The Step III appeal form and relevant documentation shall be submitted to the Board of Appeals using the contact information below by one of the following methods: U.S. certified mail, hand-delivery, fax, or e-mail (scanned and submitted electronically).

Board of Appeals
Sixteenth Floor, William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue
Nashville, TN 37243
Fax: [\(615\) 401-6848](tel:6154016848)
E-mail: DOHR.Step3Appeals@tn.gov

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The complainant will receive formal notification of the receipt of the Step III appeal by the preferred method of communication selected on the Step III appeal form. Agency notification will be made to both the appointing authority and general counsel of the agency by an email from the Board of Appeals administrator.

Upon receipt of the completed Step III form or written notification and relevant documentation by the administrator, a docket number will be assigned to the appeal and the appeal will be transferred to an Administrative Law Judge (ALJ) in the Administrative Procedures Division of the Secretary of State's Office. Notice of appearance on behalf of the agency shall be made to the ALJ within three (3) calendar days of notification of receipt of the appeal by contacting the Administrative Procedures Division at (615) 741-7008. If notice is not timely made, the ALJ will communicate directly with the general counsel for the agency. The assigned ALJ will determine, within ten (10) calendar days of assignment, if all procedural requirements for filing a Step III appeal were completed properly and in a timely manner. If not, the appeal will be dismissed by the ALJ and the complainant and agency will be notified by the method of communication selected on the Step III appeal form.

If all of the procedural requirements have been met, the Board of Appeals will proceed under the Uniform Administrative Procedures Act (UAPA), Title 4, Chapter 5 of the Tennessee Code Annotated, in making a determination whether the specific law, rule, or policy listed on the appeal form was violated, or otherwise determine whether the disciplinary action was unjustified. The Board shall issue its final decision no later than one hundred twenty (120) calendar days from the date the Step III appeal form/relevant documentation was submitted to the Board. In order to ensure the Board meets this requirement, the following conditions shall be imposed on hearings before the Board:

1. Within twenty (20) calendar days after the filing of the Step III appeal, the complainant and the agency will participate in a pre-hearing telephone conference with the assigned ALJ, at which time the hearing date will be set.
2. All motions, both dispositive (motions affecting the disposition or settlement of appeal) and non-dispositive (motions that do not affect the disposition or settlement of appeal), must be ruled on no later than thirty (30) calendar days before the hearing date.
3. All discovery must be completed no later than sixty (60) calendar days after filing the Step III appeal and relevant documentation with the Board.
4. Deadline extensions may be granted only in extraordinary circumstances as determined by either the Board or the ALJ. However, the granting of an extension does not affect the one hundred twenty (120) calendar day time period for the Board of Appeals to issue its final decision.

Prior to the Board of Appeals hearing, the complainant and agency will be notified of the logistical details for the hearing as well as any pending due dates for submission of any additional documentation for

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review by the board members. The notification will be made to complainant and agency by the preferred method of communication selected on the Step III appeal form. An original and one (1) copy of the additional documentation for the Board of Appeals will be due to the administrator no later than ten (10) calendar days prior to the hearing date. Oral argument is permitted before the Board of Appeals.

After the Step III hearing, the Board will issue a final order which may include, but is not limited to, upholding, overturning, reducing, or amending the Step II decision, as well as reinstatement of leave, award of back pay and/or attorney's fees. A final order will be submitted to the complainant or his or her representative and the agency by the preferred method of communication selected on the Step III appeal form. Neither party shall be entitled to a petition for reconsideration under Tenn. Code Ann. § 4-5-317.

If the complainant is awarded back pay, reinstatement, or attorney's fees, the involved agency must comply with the final order within thirty (30) calendar days from the date of the final order. If back pay is awarded, the reinstatement order shall specifically address back pay to the complainant and whether any offset of income earned from other employment or unemployment compensation claims will occur. If offset is to occur, the order shall include this information. If the complainant is reinstated to a position from which the employee was terminated, the complainant will be reinstated in the county where the complainant was working prior to termination, unless an exception is granted by the Commissioner. A complainant who successfully appeals dismissal for gross conduct and is reinstated must be credited with any annual leave used during the ten (10) calendar day paid notice and any annual leave forfeited to the state as a result of the dismissal. The annual time shall be charged as discretionary leave with pay, and the annual leave shall be added back to the employee's balance, along with any forfeited annual leave and any leave complainant would have accrued had they not been terminated. If attorney's fees are awarded by the Board of Appeals, the prevailing attorney shall submit required documentation (included in Section 1120-11-05 (3) of the Rules of the Department of Human Resources) to the Board no later than thirty (30) calendar days of the effective date of the final order.

The Step III hearing by the Board of Appeals is the final administrative step in the appeals procedure for preferred service employees. The Board's decisions, however, are subject to judicial review under UAPA, Title 4, Chapter 5.

Forms

The Appeal Forms for Steps I, II, and III may be obtained from the DOHR website: <https://www.tn.gov/hr/pr/forms-documents.html> by clicking on the link "Appeals" link where the appeal forms for Steps I, II, and III will be found. The agency is responsible for providing these forms to employees when computer access is not readily available. Employees may also contact the Board of Appeals administrator for assistance in obtaining any of the forms. An appeal may not be denied if it is not submitted on the form as long as the required components are included in the notice of appeal.

Questions regarding this policy may be directed to the Office of the General Counsel.