

## **SUBCHAPTER S7**

### **JOB-GRADING APPEALS**

#### **S7-1 Coverage**

The material in this subchapter applies to employees in trades, crafts, or labor occupations who are subject to sections 5343(a) and 5346 of title 5, United States Code, and to the agencies in which they are employed (these are the employees and agencies to whom subpart G of part 532 of title 5, Code of Federal Regulations, apply).

#### **S7-2 Introduction**

This subchapter describes the provisions of section 5346(c) of title 5, United States Code, and the related regulations of the Office of Personnel Management (OPM) (Subpart G of part 532), under which an employee may appeal the action of his or her employing agency in grading his or her job for pay purposes. Under this job-grading appeals system, an employee may appeal at any time the grade, title, or series assigned to his or her job, but not the standards established for the job, nor other matters such as the accuracy of his or her description, his or her rate of pay, or the propriety of a wage schedule rate. The system grants the employee an absolute right of appeal to OPM; however, before appealing to OPM, the employee must first utilize his or her agency appeal procedures, which are established to conform with certain minimal requirements of OPM.

#### **S7-3 Agency Appeal Procedures**

- a. **Establishment of an agency job-grading appeals system.** Because an employee is required to utilize his or her agency's appeal procedures before appealing to OPM, agencies are required to establish appeal procedures that provide a speedy system for reviewing an employee's appeal of the correctness of the grade of his or her job. The provisions of the agency appeals system must be published and made available to employees, their representatives, and recognized labor organizations. At a minimum, the agency appeal procedures must provide that:
  - (1) No more than one appeal level may be established within the agency before a final decision may be issued, and that appeal level, when possible, must be above the level of job-grading authority which graded the job.
  - (2) When a decision has not been issued by the review level authority within 60 days of the date the employee filed his or her appeal, he or she may request the next higher level in the agency with job-grading authority to assume jurisdiction of the appeal, and the next higher level will promptly process and decide it.
  - (3) When a final decision upholds the employee's appeal, the effective date for the change in the grade may not be later than the beginning of the first pay period which begins after the 60th day from the date the appeal was first filed.
  - (4) When the appeal is of a downgrading or other job-grading action that resulted in a reduction in grade or loss of pay, in order to be entitled to retroactive corrective action and any retroactive benefits, an employee must request a review within 15 calendar days

after the effective date of the change to lower grade in accordance with 5 CFR 532.703(b)(3).

- b. **Notice of appeal rights.** When a department makes a job-grading decision that will lead to a loss in grade or pay, it must notify the affected employee of its decision promptly and in writing. The notice must tell the employee about his or her appeal rights to the agency and to OPM, and specify the time limits within which the employee must file his or her appeal if he or she is to establish or preserve his or her rights to retroactive adjustment. If not entitled to grade retention, the employee must be notified of the right to appeal the action to the Merit Systems Protection Board. Procedures for such an appeal are in sections 1201.21 through 1201.24 of title 5, Code of Federal Regulations. Such appeals are appropriate only if the appealed action does not comply with the law or regulations; disagreement with technical classification decisions should be addressed under this chapter.

## **S7-4 Contents of an Appeal**

- a. An employee's appeal must be in writing and should clearly state the reasons the employee believes his or her job is erroneously graded.
- b. The employee shall promptly furnish such additional facts as may be requested by the agency.

## **S7-5 Time Limit for Filing an Appeal**

An employee may file an appeal at any time. When, however, the appeal involves a downgrading or other grading action which resulted in a reduction in grade or loss of pay, it must be timely filed. This time limit must be extended by the agency when the employee shows that he or she was not notified of the time limit and was not otherwise aware of it, or that he or she was prevented by circumstances beyond his or her control from filing his or her application within the prescribed time limit.

## **S7-6 Processing of an Appeal by an Agency**

- a. **Presentation of appeal.** An employee, in presenting his or her appeal under the agency review system, has the right to be represented and advised by a representative of his or her own choosing. Any employee who submits an appeal, as well as any employee who acts as his or her representative, must be assured freedom from restraint, interference, coercion, discrimination, or reprisal because of his or her participation in the agency appeal system. Both applicants and employees who act as representatives also must be given a reasonable amount of official time to prepare the appeal if they are otherwise in an active duty status.
- b. **Cancellation of appeal.**
  - (1) *At employee's request.* An employee may terminate his or her appeal under the agency's review system at any time, and the agency shall discontinue its processing of the appeal upon receipt of a written request by the employee.
  - (2) *Failure to prosecute.* When an employee does not furnish required information or otherwise does not proceed with the advancement of his or her appeal in a timely manner, the agency may cancel the appeal for failure to prosecute. The agency may, however, process the appeal to completion if the information available is sufficient for proper adjudication. An appeal canceled for failure to prosecute may be reopened at the

agency's discretion upon a showing by the employee that circumstances beyond his or her control prevented him or her from prosecuting his or her appeal.

- (3) *Separation from job.* When it is learned that the employee is no longer in the job that was the subject of the appeal, the agency shall discontinue the processing of the appeal, except when the employee would be entitled to retroactive benefits including benefits allowable after the death of the employee.
- c. **Appeals involving retroactive benefits.** Unless the employee or his or her beneficiary requests withdrawal of the appeal in writing, any appeal in which there is a possibility for retroactive benefits will be continued until a decision is reached, whether or not the employee remains in the job concerned.
- d. **Job-grading appeal file.** Each agency is responsible for maintaining a job-grading appeal file which shall constitute the appeal record, and which may not contain any information not made available to the employee.
- e. **Agency decision.** The agency's decision shall be based on the record, be in writing, and shall advise the employee of his or her right to appeal to OPM. In addition, the decision shall include an analysis of the employee's job, comparing the job with the appropriate standard. If the decision agrees with the employee's contention, and corrective action is necessary, the effective date of change in the grade of the job shall be specified in the agency decision.

## S7-7 Actions on an Appeal to OPM

- a. **By employee.** The employee may file his or her appeal with OPM only after his or her agency has issued its decision. Appeals to OPM should be directed to the OPM regional office having jurisdiction over the geographic area in which the position is located. (See appendix T.) Appeals of positions that have been certified by OPM under section 5346(b) of title 5, United States Code, and all requests for reconsideration of appeal decisions rendered by OPM regions, should be submitted to the Chief, Classification Appeals Office, in OPM headquarters, regardless of the position's geographic location. The appeal must be filed within 15 calendar days of the date of receipt of the agency's decision and the employee must specify that part of the agency's decision with which he or she disagrees. OPM may extend the time limit for filing the appeal if circumstances beyond the employee's control prevented him or her from filing it within 15 days, or he or she was not notified or otherwise aware of the time limit for filing an appeal.
- b. **By OPM.** OPM's decision will be based on the record established in the agency's review of the employee's appeal. However, OPM may audit or investigate the job, and may take the results of the audit or investigation into account in reaching its decision. With respect to desk audits, it should be noted that although the employee also has the right to select a representative of his or her own choosing in presenting the appeal to OPM, there is no right to have a representative present at a desk audit conducted by OPM.
- c. **Cancellation of appeal.**
  - (1) *At employee's request.* An employee may terminate his or her appeal at any time, and OPM shall discontinue its action on the appeal upon receipt of a written request by the employee.
  - (2) *Failure to prosecute.* When an employee does not furnish required information or otherwise does not proceed with the advancement of his or her appeal in a timely manner,

OPM may cancel the appeal for failure to prosecute. OPM, however, may process the appeal to completion if the information available is sufficient for proper adjudication. An appeal canceled for failure to prosecute may be reopened at OPM's discretion upon a showing by the employee that circumstances beyond his or her control prevented him or her from prosecuting his or her appeal.

- (3) *Separation from job.* When it is learned that the employee is no longer in the job which was the subject of the appeal, OPM shall discontinue its action on the appeal, except when the employee would be entitled to retroactive benefits including benefits allowable after the death of the employee.
- d. **Notice of decision.** OPM shall notify the employee and the agency in writing of its decision. The effective date of a change in classification of a position directed by OPM shall be specified in the decision of OPM and computed as in section S7-3.

## **S7-8 Effects of OPM Appeal Decisions**

- a. **Finality of decision.** The decision of OPM will include the effective date for corrective action, if warranted, and it shall constitute a certificate that is binding on all administrative, certifying, payroll, disbursing, and accounting officers of the Government. The decision is final, and an employee has no further right to appeal.
- b. **Reconsideration at OPM discretion.** When requested by an employee or an agency, the OPM Central Office may, at its discretion, reopen any decision made by a regional office. In addition, the Director may, upon request and when such action in his or her judgment appears warranted by the circumstances, reopen and reconsider any previous decision. Agency requests for reconsideration must be filed through the agency's headquarters personnel office.
- c. **Effect on downgrading or loss of pay.** An appeal decision that corrects a downgrading or a loss of pay retroactively will require correction of records. It may, of course, also require supplemental salary payments. OPM's pay regulations will determine the extent to which retroactive adjustments are appropriate. All administrative actions of this kind must be reconstructed on the basis of the grade considered proper in the decision, with full regard to the rules governing effective dates.