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## PERSONNEL

ADVAP 2-2

January 1, 2018

### **Employee Grievance Procedure and Dispute Resolution**

1. **GENERAL:** The effectiveness of the Arkansas Department of Veterans Affairs (ADVA), and the degree to which state funds provide maximum service to the Veterans, dependents and survivors we are charged to assist, hinges directly on the effectiveness of our employees. This procedure is established to provide a means to ensure this employee effectiveness is not diminished by workplace or workday occurrences.
2. **PURPOSE:**
  - a. The purpose of these rules and procedures is to establish a dispute resolution process pursuant to Arkansas Code Annotated §§ 21-1-701 through 704 for the prompt review, impartial consideration, and equitable disposition of Arkansas state employee grievances.
  - b. These rules and procedures also encourage alternative means of discussion and resolution among supervisory employees and their employees.
3. **POLICY:**
  - a. Employees shall be given the opportunity to resolve complaints or grievances they believe adversely affect their employment or working conditions through the established dispute resolution process of this state agency to ensure fair resolution of their complaint or grievance within a reasonable period of time.

- b. The state agency and the employee shall take all reasonable efforts to settle a complaint or grievance as quickly as possible. Informal discussion between a supervisory employee and employee is encouraged. Before filing a grievance, an employee is encouraged to discuss with his/her immediate supervisor the employee's problem in order to reach a satisfactory solution to their problems. (If the complaint is sexual harassment against the supervisor, the employee will meet directly with the Sexual Harassment Grievance Officer.)
- c. The ADVA Director, or Deputy Director, may intervene at any step in the grievance procedure if the ADVA Director decides that direct action is necessary to resolve the grievance. Direct action should involve only the grievant and/or the supervisory employee. The ADVA Director will make every effort to resolve all matters involving allegations of unlawful discrimination, termination, and suspension without pay, involuntary demotion and/or failure to award compensatory time.
- d. Participation in the dispute resolution process is voluntary. The dispute resolution process may be terminated by the employee at any stage if an agreement between the parties is reached.
- e. A party may be represented at each step of the dispute resolution process except during informal discussions between the employee and supervisory employee held prior to the filing of a grievance. Attorney's fees shall not be awarded. The agency may be represented by the Attorney General's Office.
- f. An employee and his or her representative will be allowed time during working hours to attend the grievance meetings so long as it does not impact the Agency's mission. An employee must get prior approval from his or her supervisor for this time away from his or her job. An employee will be paid for time spent in formal grievance meetings. Time spent preparing a grievance is without pay and is to be done outside working hours.
- g. Any person within the department who intentionally interferes with, hinders, blocks or otherwise impedes the processing of a grievance will be subject to disciplinary action. An employee who fails to meet the established deadlines in accordance with this policy will forfeit their rights under this policy. A supervisor who fails to meet the established deadlines in accordance with this policy may be subject to a disciplinary action.

- h. Administrative Review Hearings will not be rescheduled to accommodate a party, including the last minute hiring of an attorney.
- i. All parties are bound by confidentiality and will not share information about grievances except with those persons who, in the discretion of the ADVA Director, have a legitimate need to know. Compromising confidentiality may be subject to disciplinary action.
- j. These procedures established herein recognize the employment-at-will doctrine and its exceptions as defined by the Arkansas Supreme Court and do not confer a property right in employment, either expressed or implied.
- k. Access to any of these procedures does not prohibit an employee from utilizing remedies outside these procedures. An employee reserves the right to file a complaint with a federal entity or pursue the matter in court.

4. DEFINITIONS:

- a. Administrative Record – The case file specific to each grievance assembled according to the Office of Personnel Management (“OPM”) Administrative Record Rules.
- b. Administrative Review Hearing – An internal fact-finding hearing before a Hearing Officer.
- c. Adverse action – To discharge, threaten, or otherwise discriminate or retaliate against a public employee in any manner that affects the employee’s employment, including compensation, job location, rights, immunities, promotions, or privileges.
- d. Appeal – A written request by a party to OPM for a review by the State Employee Grievance Appeal Panel of a final decision from the state agency Director.
- e. Disciplinary action – Termination, suspension, involuntary demotion, written reprimands, and non-new-hire probation.
- f. Dispute resolution – A procedure that allows parties to constructively manage conflicts through grievances or mediation.
- g. Employee – A person regularly appointed or employed in a position of state service by the state agency for which he or she is compensated on a full-time basis or on a pro rata basis for whom a class title and pay grade are established in the appropriation act for the state agency in accordance

with the Uniform Classification and Compensation Act. An employee on initial new-hire probationary status is not an employee for purposes of these rules and procedures. An employee does not include a supervisory employee.

- h. Grievance - A complaint by an employee regarding a disciplinary action, discrimination, harassment, or the denial of compensatory time made by the supervisory employee, but not including compensation and conditions which are beyond the control of the state agency or are mandated by law.
- i. Grievance Officer – The person designated by the state agency as having the responsibility for acting as the liaison between the employee and the state agency.
- j. Hearing Officer – An impartial person appointed to review the facts of the grievance and make a recommendation for resolution to the state agency Director.
- k. Mediation – A collaborative problem-solving and joint decision-making process between the employee and supervisory employee, through utilization of a third-party neutral (mediator).
- l. Party – The employee filing the grievance or the supervisory employee against whom the grievance has been filed.
- m. State agency –Arkansas Department of Veterans Affairs
- n. State Employee Grievance Appeal Panel (“Panel”) – An impartial appeal panel established to review the facts of the grievance and issue a binding decision.
- o. Supervisory employee – An individual having authority in the interest of a state agency to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees of the state agency; or if his or her exercise of authority requires the use of independent judgment and is not of a merely routine or clerical nature, the responsibility to direct other employees of the state agency by which he or she is employed.

## 5. PROCEDURE:

If the complaint is not resolved by informal discussion with the supervisory employee, the employee may contact ADVA human resources headquarters to be assigned a grievance officer. The grievance officer, or his or her

designee, shall assist the employee in initiating the formal dispute resolution process.

The employee has five (5) business days from the date of the disputed action to submit the Dispute Resolution Form to the grievance officer. An employee shall complete the Dispute Resolution Form completely and provide sufficient information detailing the nature of the disputed action. Incomplete forms will not be accepted.

An employee shall not be subject to adverse action for utilizing the dispute resolution process.

All complaints or grievances shall be processed through ADVA's grievance officer and shall be handled as follows:

1. The employee has the option to choose mediation or proceed to the Administrative Review hearing and shall clearly indicate on the Dispute Resolution Form which option is selected as the first step.
2. Determination:
  - a. The grievance officer shall determine whether the complaint is grievable or eligible for mediation.
  - b. If the grievance officer and employee are unable to agree on whether a complaint is grievable or eligible for mediation, then the complaint shall be sent to the Grievance Coordinator at OPM for a review by the Panel.
  - c. The final determination on whether a complaint is grievable or eligible for mediation shall be determined by the Panel within seven (7) business days of the Grievance Coordinator's receipt of the complaint.
  - d. If the decision states that the complaint is grievable or eligible for mediation, then the employee may proceed to mediation.
3. If the supervisory employee does not consent to mediation, the first step shall be the Administrative Review Hearing.
4. The grievance officer shall be responsible for assembling the Administrative Record pursuant to OPM's Administrative Record Rules.

6. MEDIATION:

An employee may request mediation if the complaint concerns an allegation that the employee has been:

- a. Terminated;
- b. Demoted;
- c. Suspended for fourteen (14) or more days; or
- d. Subject to adverse action by his or her state agency for
  1. Communicating in good faith to an appropriate authority:
    - a. The existence of waste of public funds, property, or manpower, including federal funds, property, or manpower administered or controlled by a public employer; or
    - b. A violation or suspended violation of a law, rule, or regulation adopted under the laws of this state or a political subdivision of the state;
  2. Participating or giving information in an investigation, hearing, court proceeding, legislative or other inquiry, or in any form of administrative review; or
  3. Objecting or refusing to carry out a directive that the employee reasonably believes violates a law, rule, or regulation adopted under the authority of the laws of the state or a political subdivision of the state.

The mediation shall be held within ten (10) business days of both parties agreeing to mediate.

OPM shall maintain a roster of certified mediators and shall be responsible for assigning a mediator.

A mediator is not required to be an attorney but shall be certified by the Arkansas Alternative Dispute Resolution Commission. The mediator shall not be employed by the state agency that is a party to the mediation.

A party may be represented by an attorney or other representative at the mediation.

The mediation shall be confidential; however, the Settlement or Non-settlement Agreement is subject to the Freedom of Information Act.

The Settlement or Non-settlement Agreement shall be signed by the parties and become a part of the Administrative Record.

Within one (1) business day of the conclusion of the mediation, the mediator shall provide the Settlement or Non-settlement Agreement to the Grievance Coordinator at OPM who will forward it to the Agency.

Settlement Agreement - If the parties reach a settlement during mediation, the dispute resolution process is considered resolved and the settlement is binding on the parties.

Non-settlement Agreement - If the parties reach a Non-settlement Agreement during mediation, the employee may request within three (3) business days of the Non-settlement Agreement an internal Administrative Review Hearing before the Hearing Officer.

#### 7. ADMINISTRATIVE REVIEW HEARING:

The grievance officer shall coordinate and schedule the hearing to be held within ten (10) business days of receipt of the employee's request, unless an extension is required based on availability of the parties.

The grievance officer shall be responsible for assembling the Administrative Record and providing copies to the parties and the hearing officer.

The hearing shall be recorded and may be transcribed at the discretion of the hearing officer and become a part of the Administrative Record. If the grievance is ultimately appealed to the Panel, a transcript shall be made.

A party may have any persons having knowledge of matters relevant to the grievance present at the hearing to provide testimony. The grievance officer is responsible for notifying any witnesses that are employees of the agency. The parties are responsible for notifying any witnesses that are not employees of the state agency. The hearing officer may request to hear testimony from any persons having knowledge of matters relevant to the grievance that are not already requested to be present.

A party or the hearing officer may "Invoke the Rule", excluding all non-party witnesses from the hearing room unless they are testifying.

A party may present additional evidence. If accepted by the hearing officer the evidence shall become a part of the Administrative Record as an exhibit.

Within three (3) business days of the conclusion of the hearing, the hearing officer shall issue a typewritten recommendation summarizing the hearing and explaining in detail the basis for his or her decision. The hearing officer shall provide a copy to the state agency Director, the parties, and the grievance officer. The recommendation shall become a part of the Administrative Record.

The ADVA Director shall review the recommendation and issue a final decision within five (5) business days.

8. APPEAL TO OPM:

If an employee is not satisfied with the decision reached by the ADVA Director, he or she may appeal, using a form provided by OPM, and request nonbinding mediation or an appeal hearing before the Panel.

If an employee chooses nonbinding mediation as the first appeal step, he or she does not waive his or her right to later request an appeal hearing before the Panel; however, written reprimands, allegations of discrimination or harassment, and the denial of compensatory time are not eligible for nonbinding mediation.

A request for nonbinding mediation shall be filed with the state agency's grievance officer no later than fifteen (15) business days of receipt of the ADVA Director's decision.

A request for an appeal hearing before the Panel shall be filed with the state agency's grievance officer no later than ten (10) business days of receipt of the ADVA Director's decision or ten (10) business days of the Non-settlement in mediation.

9. DOCUMENTATION:

It will be the responsibility of the grievance officer to file a report of the grievance, the procedures followed and of its ultimate disposition, along with copies of all documentary evidence, with the departmental personnel officer within ten (10) working days following final disposition of the grievance. In addition, when an employee commences the formal grievance procedure at any step, it will be the responsibility of the grievance officer to immediately file a form with the departmental personnel officer, listing the name of the employee and of his/her immediate supervisor, the employing unit, the name of the grievance officer chosen, a statement of the nature of the grievance and

the date formal proceedings commenced. All documentation relating to an employee grievance, which will be maintained in the department personnel office, will be placed in a file separate from the employee's personnel file. No information relating to the grievance will become a part of any employee's permanent personnel record. However, such records will be maintained in hard copy for three (3) years and permanently in such a manner as may be prescribed in applicable state and federal laws with regard to retention of such records.

10. GRIEVANCE PROCEDURE REVISION POLICY:

The ADVA Director may revise the Grievance Procedure. Any changes must be submitted to the Office of Personnel Management for review and approval before becoming effective and will be made public to the employees of ADVA before becoming effective.

11. SUPERSESSION: This procedure supersedes ADVAP 2-2, July 1, 2014, in its entirety.

12. FORMS PRESCRIBED:

- a. Form – Administrative Record Tracking
  - b. Form – Agreement to Mediate
  - c. Form – Agreement to Mediate – Appeal
  - d. Form – Dispute Resolution – Appeal Form
  - e. Form – Dispute Resolution Form
  - f. Form – Mediation Non-Settlement
  - g. Form – Mediation Non-Settlement – Appeal
  - h. Form – Mediation Non-Settlement Agreement
  - i. Form – Reply to Employee Grievance Immediate Supervisor-Step 1
  - j. Form – Reply to Employee Grievance Assistant Director-Step 2
  - k. Form – Reply to Employee Grievance Department Director-Step 3
  - l. Form – SEAGAP Hearing Witness List
  - m. Form – Transmittal for Grievance Determination
- ATCH 1 – Grievance Ineligible/Eligible List  
ATCH 2 – Grievance Officer/Hearing Officer List  
ATCH 3 – Flowchart

All forms can be found on the DFA, OPM Dispute Resolution website.  
<http://www.dfa.arkansas.gov/offices/personnelManagement/Pages/DisputeResolution.aspx>

By:

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