



U. S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
DIRECTIVES SYSTEM

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Subject: Agency Administered Grievance Procedure

Approval: *[Signature]* Title: Director

1. Purpose. This directive provides guidance to all Office of Surface Mining Reclamation and Enforcement (OSM) nonbargaining unit employees in the use of the agency's procedure for resolving grievances.

2. Summary of Changes. The directive is being reissued to incorporate changes as a result of the reorganization and to update it. Explanations of changes follow:

a. The definitions have been updated to conform to the current Office of Personnel Management (OPM) issuances (para 3).

b. Matters not covered have been made more specific in line with OPM issuances (para 4.f.).

c. Requests for review by the Office of Hearings and Appeals will be filed with the Servicing Personnel Office rather than the Deciding Official to cut processing time (para 4.n.(1)).

d. The flow of the topics has been changed to increase the understanding of the process.

3. Definitions.

a. Bargaining Unit Employee means an employee (presently at Headquarters only) included in an appropriate exclusive bargaining unit as determined by the Federal Labor Relations Authority for which a labor organization has been granted exclusive recognition.

b. Days mean calendar days unless otherwise specified.

c. Deciding Official means an official designated to: (1) receive and attempt to adjust formal grievances; (2) refer formal grievances to an examiner where necessary; and, (3) decide formal grievance on the basis of examiners's reports. In all cases, the deciding official must be at the next higher administrative level than anyone who could have adjusted the grievance under the informal grievance procedure.

d. Division of Personnel means the Headquarters Personnel Office.

e. Employee may include a current or former employee of OSM for whom a specific remedy can still be appropriately provided. Former employees must file a timely grievance concerning a matter appropriate for review under these procedures prior to separation in order to receive consideration.

f. Grievance means a request by an employee, or by a group of employees acting as individuals, for personal relief in a matter of concern or dissatisfaction relating to the employment of the employee(s) which is subject to the control of agency management.

g. Grievance File means a separate file subject to the Privacy Act which contains all documents related to the grievance, including, but not limited to any statements of witnesses, records or copies thereof, the report of the hearing when one is held, statements made by the parties to the grievance, and the decision.

h. Personal Relief means a specific remedy directly benefiting the grievant(s), but may not include a request for disciplinary or other action affecting another employee.

i. Servicing Personnel Office (SPO) means Branch of Employee Management Relations in Washington, D.C.; Branch of Personnel Management in Denver, Colorado; or Finance and Human Resources Branch in Pittsburgh, Pennsylvania.

4. Policy/Procedures.

a. Grievance Rights

(1) All employees will be treated fairly in all respects. Those who believe they have not been so treated have a right to present their grievances to management officials for prompt consideration and fair decision. An employee may exercise this right in his/her own behalf or may elect to be accompanied, represented, and advised by a representative of his/her own choosing. (Guidelines on representation are given in paragraph 4.h.) In exercising this right, the employee and his/her representative will be free from restraint, interference, coercion, discrimination, or reprisal.

(2) Day-to-day discussions between employees and supervisors about working conditions and other employment matters are the best means of conducting effective work relationships. Supervisors and managers will try to resolve employee dissatisfactions in normal, day-to-day dealings with employees. However, when a matter cannot be resolved to the satisfaction of the employee, he or she may seek a resolution by filing a grievance.

(3) Dissatisfactions and disagreements sometimes arise among people in any work situation. Thus, the filing of a grievance by an employee will not reflect unfavorably on an employee's good standing, performance, loyalty, or worth to the organization. Also, the filing of a grievance does not reflect unfavorably on the quality of supervision or on the general management of an organization.

(4) An employee presenting a grievance is entitled to seek advice and assistance from the employee's Servicing Personnel Office. The SPO will provide procedural advice on the grievance process but will not address the merits of a grievance.

b. Responsibilities.

(1) Director. The Director of OSM has overall responsibility for the development and administration of the agency employee grievance policy and procedure. The Director shall delegate authority to administer the policy to those officials responsible for the employment and utilization of personnel.

(2) Bureau Personnel Officer. The Bureau Personnel Officer or designee has responsibility for the ongoing operations of the employee grievance procedure and reserves the right to assume jurisdiction of a grievance at any stage in the proceedings.

(3) Servicing Personnel Offices. It is the responsibility of Servicing Personnel Offices to provide technical advice to managers and employees concerning grievance procedures and other personnel directives that may be related to the grievance issues.

(4) Supervisors. It is the responsibility of supervisors to administer the employee grievance procedure and bring it to the attention of all employees. Supervisors are to hear any employee complaints and to try to clarify misunderstandings and make reasonable adjustments to address problems that arise in day-to-day relationships with employees.

(5) Grievants. It is the responsibility of employees who file grievances to comply with appropriate time limits established by this directive, furnish sufficient detail to clearly identify the matter being grieved, and specify the personal relief being requested.

(6) Grievance Examiner. The grievance examiner, from the Department's Office of Hearings and Appeals, is responsible for making an impartial and objective inquiry as to the merits of a grievance and for providing a report of findings and recommendations to the parties.

c. Employees Covered. The grievance procedure is available to all OSM employees who are not members of the bargaining unit (regardless of whether they join the union or not) regardless of type and tenure of appointment, except for categories cited in 5 CFR 771.206(b).

d. Matters Covered. Except as provided in 4.f., below, the grievance procedure applies to any matter of concern or dissatisfaction relating to the employment of an employee which is subject to the control of agency management and including any matter on which an employee alleges that coercion, reprisal or retaliation has been practiced against him or her. Some examples would be: disapproval of a request for annual leave, denial of previously approved training, change in duty hours, etc.

e. Matters Covered by Other Procedures.

(1) Complaints or appeals covered by other intra-Departmental review methods will be processed in accordance with procedures described specifically for those issues. Use of these procedures supersedes and substitutes for any other administrative procedures. Among the matters to be reviewed under special procedures are:

(a) Requests for Reconsideration Review of Appraisals (PER-14);

(b) Divestiture Orders (43 CFR 20.735-43);

(c) Coverage under the Performance Management and Recognition System (370 DM 540 and PER-19);

(d) Separation of Probationers (370 DM 315); and

(e) Position Classification Appeals (PER-3).

(2) Complaints, allegations, and reports of official misconduct, mismanagement, waste, fraud, and inefficiency that do not involve personal relief may be submitted to one of the following:

(a) The Department of the Interior Office of Inspector General; or

(b) The Office of Special Counsel for investigating prohibited personnel practices (such as reprisals for Whistleblowing).

f. Matters Not Covered. This grievance procedure does not apply to any of the following:

(1) The content of published regulations and policies. As an alternative, an employee's allegation that locally established policy is in conflict with law or regulation of a higher authority may be submitted through the Division of Personnel to the office of primary responsibility for its issuance at the bureau or Departmental level for consideration;

(2) A decision which is appealable to the Merit Systems Protection Board, or subject to final administrative review by the Office of Personnel Management, or the Equal Employment Opportunity Commission under law or regulation of the Office or the Commission;

(3) Nonselection for promotion from a group of properly ranked and certified candidates or failure to receive a noncompetitive promotion (e.g., career-ladder promotion);

(4) A preliminary warning notice of an action which would be covered under the grievance system or excluded from coverage by paragraph 4.f.(2) above if the action is effected;

(5) A return of a Senior Executive Service career appointee to the General Schedule or GM during the one-year period of probation or for less than fully successful executive performance;

(6) A reassignment of a Senior Executive Service appointee following the appointee's receipt of an unsatisfactory rating;

(7) An action which terminates a temporary promotion within a maximum period of two years and returns the employee to the position from which the employee was temporarily promoted, or reassigns or demotes the employee to a different position that is not at a lower grade or pay than the position from which the employee was temporarily promoted;

(8) An action which terminates a term promotion at the completion of the project or specified period, or at the end of a rotational assignment in excess of two years but not more than five years, and returns the employee to the position from which promoted or to a different position of equivalent grade and pay in accordance with regulation;

- (9) The substance of the critical elements and performance standards of an employee's position which have been established in accordance with regulation or any other concern involving performance rating (PER-14);
- (10) The granting of or failure to grant or the amount of a performance award or other discretionary award; the adoption of or failure to adopt an employee suggestion or invention; or the granting of or failure to grant an award of the rank of meritorious or distinguished executive;
- (11) The receipt of or failure to receive an SES performance award;
- (12) The receipt of or failure to receive a quality step increase;
- (13) A decision to grant or not to grant a general increase, merit increase, or performance award under the Performance Management and Recognition System (PMRS) or a decision on the granting of or failure to grant cash awards or honorary recognition under the PMRS;
- (14) The termination of an employee serving a probationary or trial period after initial appointment for unsatisfactory performance or conduct;
- (15) The termination of an SES Career appointee during probation for unsatisfactory performance;
- (16) A performance evaluation for a member of the Senior Executive Service;
- (17) An action taken in accordance with the terms of a formal agreement voluntarily entered into by an employee which assigns the employee from one geographical location to another;
- (18) A return of an employee from an initial appointment as a supervisor or manager to a nonsupervisory or nonmanagerial position for failure to satisfactorily complete the probationary period;
- (19) A separation action (other than those affecting certain excepted employees as specified in 370 DM 752), or expiration of term appointment;
- (20) An audit or investigation being made of any employee by the Office of Inspector General; the General Accounting Office; the Attorney General; the Department of Justice; the Office of Special Counsel; MSPB; or OSM;
- (21) Relief specified that is not personal to the grievant or is not subject to the control of management;
- (22) Any grievance presented by applicants for employment from outside the agency pursuant to 5 CFR 771.204(b);
- (23) A matter raised by a bargaining unit employee that is covered by the negotiated grievance procedure.

g. Official Time.

(1) Employees must be told that they can seek assistance from their SPO in resolving and submitting grievances. The SPO may not serve as their advocate.

(2) Employees, if otherwise in a duty status, may use reasonable amounts of official time, subject to supervisory approval, to get advice on rights and privileges from official sources; get information on or assistance with grievances from official sources; or present grievances.

(3) The time allowed depends on the facts of the specific case. Official time will not be granted for preparing a grievance (organizing material, writing, and typing the grievance).

(4) A grievant is not entitled to use Government resources, such as typing assistance, word processing equipment, supplies and material in preparing the grievance.

(5) Department of the Interior (DOI) employees, serving as employee representatives, may use reasonable amounts of official time to act as representatives, if otherwise in a duty status.

h. Representation.

(1) A grievant can be accompanied, represented, and advised by a representative of his/her own choosing. The representative's service must not result in a conflict or apparent conflict of interest or position, conflict with the priority needs of OSM, or give rise to unreasonable costs to the Government. OSM will not select a representative for an employee or require any person to serve as the representative of another. The grievant must make all arrangements for a representative.

(2) Designation or change of representative must be made in writing to the official to whom the grievance is being presented. The designation will include the representative's name, address, and telephone number, along with a signed statement authorizing the representative access to the employee's records.

(3) Management may disallow an employee's choice of a representative at any time. The employee will be told, in writing, the specific reasons for the disapproval. The employee may file a request for reconsideration with the Director of Personnel, Department of the Interior, Room 5203, 1849 C Street, N.W., Washington, D.C. 20240. The request must be filed within ten (10) days of the employee's receipt of notification that the representative has been disallowed.

(4) DOI employees may use reasonable amounts of official time to act as a representative. Their supervisor must approve their use of official time. However, official time will not be granted to an employee for repeated service as a representative when it interferes with the performance of regular duties. In this situation, the employee will be given the choice of reducing his/her representational activities or to perform them in a leave status. For leave to be taken, the supervisor must approve it.

(5) The representative must abide by the same rules of conduct and procedures as the employee.

i. Cancellation of Grievance. A grievance will be cancelled:

- (1) At the employee's request;
- (2) Upon termination of the employee's employment with the Department, unless the personal relief sought may be granted after termination;
- (3) Upon the death of the employee unless the grievance involved a question of pay; or,
- (4) For failure to prosecute if the employee does not furnish required information and duly proceed with the advancement of the grievance.

j. Review of Eligibility Determination.

- (1) If the Bureau Personnel Officer was the party to initially reject the grievance on procedural grounds, an employee may request further review of this determination by the Director of Personnel, DOI.
- (2) There is no right to further review of a grievance rejection decision by the Department or the Merit Systems Protection Board.
- (3) Requests for review by the Director of Personnel, DOI, must be submitted within fifteen (15) days of receipt of a rejection notice or decision letter.

k. Dual Processing. Allegations of Discrimination. Initiation of a complaint under Equal Employment Opportunity (EEO) complaint procedures, negotiated grievance procedures, or other intra-Departmental complaint systems supersedes and forecloses advancement of the same matters under this grievance procedure. If the matter being grieved becomes the subject of an EEO complaint by the grievant, the official considering the grievance will terminate its processing and refer it to the OSM Equal Opportunity Officer for appropriate action; that is, processing under the discrimination complaint procedures (370 DM 713).

l. Informal Procedure.

(1) Except as indicated in paragraph 4.1.(6) or (7) below, an employee must first attempt to seek informal adjustment by presenting the grievance to the employee's immediate supervisor or whomever is acting for the supervisor. The initial presentation may be oral or written. (Subsequent presentation must be in writing.) When the grievance concerns relationships with, or actions taken by the immediate supervisor, the grievance may be presented to the next higher level of supervision. Employees must tell the supervisor that they are presenting a grievance. This is necessary to distinguish grievances from mere inquiries or complaints.

(2) The employee must present the grievance informally within fifteen (15) days of the action's occurring (the effective date for personnel actions and date of the event for other matters) or of learning of its occurrence. An employee may present a grievance concerning a continuing practice or condition at any time. Situations caused by actions which were

taken or were identified as of a given date (e.g., reprimands, miscredit of leave balances) are not considered continuing conditions for these purposes. The fact that an employee only recently learned of an occurrence does not automatically guarantee that the employee's grievance is timely. The employee must always exercise due diligence in his/her own behalf. The deadline for initial filing of a grievance may be extended by the management official receiving the grievance with concurrence of the employee's Servicing Personnel Office.

(3) The supervisor receiving the grievance will attempt to resolve it as expeditiously as possible, seeking the advice and assistance of others where necessary. The supervisor will give the employee a written decision on the matter not later than seven (7) days after receipt. If the supervisor fails to do this, the employee may file formally on the 8th day.

(4) The decision memorandum will briefly summarize the grievance, the consideration given it, the conclusions reached, and the course of action decided. If the subject matter required consultation with other supervisors or staff officials, the employee will be advised of their participation in the decision. (Advising of consultation is required only for contacts concerning the substance of the grievance; contacts concerning only the mechanics of the grievance process are excluded.) If the relief sought cannot be granted, the decision will state the employee's right to submit the grievance formally. It will also inform the employee of the seven (7) day time limit for submitting a formal grievance and to whom it should be addressed. The employee will also be given the name of the Personnel Specialist who can assist in making such a request.

(5) A grievance may NOT be denied in the informal procedure. If the supervisor believes that the grievance is not timely or consists of matters not covered under the grievance system, the employee must be so advised, but must also be allowed to submit the grievance for a further determination under the formal procedure.

(6) Unless waived by management for a specific reason, a grievant must pursue relief under the informal procedure before advancing a grievance to the formal stage. Management will document the reason for the waiver in the grievance file. The employee and a management official will sign the waiver.

(7) Some grievances may be filed formally without going through the informal procedure. In these cases, the formal nature of the actions involved and the consideration given to the employee's position before issuing the decision substitutes for the informal procedure. Therefore, grievances involving the following issues may be filed under the formal procedures with the employee's Servicing Personnel Office within fifteen (15) days of the effective date of the action being grieved:

- (a) Request for withdrawal of a letter of reprimand;
- (b) Grievances stemming from suspensions for fourteen (14) days or less; and
- (c) Grievances over management directed reassignments.

m. Formal Procedure.

(1) Initial Processing. When an employee receives a decision under the informal procedure which does not satisfy the grievant, or when the time limit for management actions has expired without a decision, or a waiver was signed (4.i.(6)), the employee may within seven (7) days thereafter, submit the grievance for further consideration.

(a) The grievance, at this stage, must be in writing, signed by the employee or an authorized representative (see 4.h.), explain the issues involved and the personal relief sought. Copies of any documents related to the grievance or to the efforts at informal resolution are to be attached, if applicable.

(b) The employee will submit the grievance to his/her Servicing Personnel Office for referral to a deciding official.

(c) Promptly upon receipt of a grievance, the employee's Servicing Personnel Office will make a procedural review of acceptability and within seven (7) days take one of the following actions:

1. Reject the grievance. A grievance will be rejected if it consists wholly of matters excluded from coverage under the grievance procedure or if it was not timely filed and the employee did not show good cause for the delay. The employee will be notified in writing of the basis for rejection. The notification will advise the employee of the right to request a review by the Bureau Personnel Officer, if he or she is not satisfied with the determination. Requests for review must be made within fifteen (15) days of receipt of the rejection notice. When the Bureau Personnel Officer has made the initial eligibility determination, a request for review may be made by the employee to the Department's Director of Personnel (see paragraph 4.j.);

2. Return the grievance for informal filing. Except for instances cited in 4.i.(6) and (7), OSM requires informal efforts to resolve a grievance. If any employee does not seek informal adjustment before filing the grievance, the grievance will be returned to the employee stating the requirement to use the informal procedure. The grievance will also be returned if no personal relief or if improper relief is specified by the grievant;

3. Accept the grievance. If the grievance is acceptable, the employee's Servicing Personnel Office will establish a grievance file and refer it for consideration to the deciding official. Deciding officials will be designated in writing by the employee's Servicing Personnel Office.

(2) Deciding Official.

(a) The deciding official will adjust and decide the grievance unless he/she was directly involved in any informal procedure, took an action, or made a decision which is at issue in the grievance. Involvement means more than mere knowledge of the matter being grieved. To have been "involved", the official must have made or influenced a decision regarding the matter being grieved or must have a personal interest in the matter. In this event, the deciding official must disqualify himself/herself from the adjustment and decision-making process and forward the grievance to the next higher administrative level.

(b) The deciding official is usually the official at the next higher organizational level above the grievant's supervisor. The SPO may designate an official to receive and act upon grievances for specified groups of employees. Where appropriate, the grievance may alternately be submitted to the lowest level official with capacity to grant the relief (e.g., a staff official), but not to two deciding officials.

(c) Determination of the most appropriate echelon or official to serve as a deciding official in a given case is made by the employee's Servicing Personnel Office. When the Director of OSM has had substantive involvement in earlier processing of the grievance, an alternate deciding official such as the Assistant Secretary, Land and Minerals Management should be designated.

(d) Within twenty-one (21) days of receipt of the grievance file the deciding official will:

1 Review the grievance file. This is to determine if adjustments can be made in a manner acceptable to the employee.

2 Issue an adjustment proposal, if appropriate. If all or part of the relief requested by the employee can be granted, or if an offer of an alternative remedy which might be acceptable to the employee can be made, the deciding official issues an adjustment proposal, in writing, to the employee or representative. If corrective action is ordered, the official implementing the adjustment must notify the deciding official of compliance within a specified time frame.

3 Issue a negative determination, if appropriate. If the deciding official determines that no adjustment is possible or appropriate, the employee must be informed in writing of the negative determination.

(e) Failure of the deciding official to respond within twenty-one (21) days permits escalation of the grievance to the Office of Hearings and Appeals (OHA) in accordance with instructions in paragraph n.(1) below.

(f) The notice of adjustment or negative determination must inform the employee of the right to have the grievance reviewed by an OHA examiner if he/she is dissatisfied with the adjustment effort. Employees will be told that they have seven (7) days from the date of receipt of the adjustment proposal or negative determination in which to request (in writing) such review. The time limit must be clearly stated. If a request for review is not made within the prescribed time limit, the grievance will be terminated for failure to prosecute, unless the grievant shows good cause and the deciding official accepts the grievant's late response. The request for review will be made directly by the grievant to the SPO, unless directed otherwise in writing. The SPO will prepare the transmittal of the grievance file to the Chief Personnel Appeals Examiner, Office of Hearing and Appeals (OHA), 4015 Wilson Boulevard, Arlington, Virginia 22203, for signature of the deciding official.

n. Consideration of Grievances by the Office of Hearings and Appeals (OHA).

(1) If the deciding official fails to make any decision, renders a negative determination, or fails to offer an adjustment within twenty-one (21) days from the date the deciding official receives the grievance file, the grievant may request further review by an examiner. This request will be made directly by the grievant to the Servicing Personnel Office. The SPO will prepare the transmittal of the grievance file to the Chief Personnel Appeals Examiner, Office of Hearing and Appeals (OHA), 4015 Wilson Boulevard, Arlington, Virginia 22203, for signature of the deciding official.

(2) Where an employee makes a timely request to the SPO for review by an examiner, the SPO has seven (7) days from the date of receipt of the request to ensure transmittal of the grievance file to the Chief Personnel Appeals Examiner, Office of Hearings and Appeals, for the assignment of a grievance examiner.

(3) The transmittal of the grievance file to the Office of Hearing and Appeals (OHA) will be by memorandum (with a copy served upon the grievant or his/her representative) and will state the name, title, location, and telephone number of the employee concerned and his/her representative, if any, as well as the OSM official with whom the examiner will have direct communication regarding the scheduling of the hearing or inquiry. The notification should also identify by name, title, and office the deciding official so that the case file can be transmitted by the examiner upon completion of the findings and recommendations. A copy of the grievance file is also provided to the grievant or his/her representative at this time. Requests from deciding officials not at Headquarters are to be forwarded through the SPO to the Division of Personnel.

(4) Guidelines for this phase of the process are contained in Appendix A.

(5) The parties may, as an alternative, invoke the Expedited Inquiry Procedure of Appendix B to this directive in order to obtain a quicker resolution.

(6) Conduct of Hearings. Examiners will conduct hearings at their discretion according to Departmental directives and Office of Hearing and Appeals (OHA) policy. See 370 DM 771.

(7) Selection of Examiner and Expenses.

(a) When an examiner is retained from the Office of Hearings and Appeals, the salary of the examiner will be paid by the Office of Hearings and Appeals. Except for expenses such as attorney's fees, stenographic fees, salaries of witnesses other than Departmental employees, etc., incurred by the employee in preparing and presenting his/her case, all expenses incurred in the conduct of a hearing or inquiry, including the transcript costs, salary and travel expenses of the examiner, will be borne by the OSM organization which employs/employed the grievant.

(b) It is the responsibility of the Office of Hearings and Appeals to provide qualified employee grievance examiners who will directly conduct the inquiry into employee grievances within the Department.

(c) Such an examiner will be paid on the basis of each hearing day, plus reasonable preparation time.

1 Preparation time will include the written decision on the cases heard. A normal hearing day will be from 9:30 a.m. to 12:30 p.m. and 1:30 p.m. to 4:30 p.m., and be held on Federal premises (owned or rented).

2 Fee schedules for hearings and preparation time will be based on predetermined amounts that distinguish fees as follows:

Per half-day hearing if one or two cases are heard;

Per day of hearing if one or two cases are heard; or,

Per hour for preparation time, if involved.

(d) Travel expenses will be paid when the hearing is scheduled away from the examiner's normal duty station. If used, privately-owned car expenses will be paid at the current GSA rate per mile. If overnight stay is required, the examiner shall be paid for lodging and meals consistent with prescribed GSA allowances.

(e) If hearings are cancelled by the parties and the examiner is notified at least forty-eight (48) hours prior to the scheduled beginning of the hearings, the examiner will be paid a predetermined amount. If the examiner appears at the hearing and a case is settled or cancelled by the parties without a hearing, the examiner will be paid a predetermined amount, plus any travel and lodging expenses incurred. The examiner will bill the employing office of the grievant, through OHA, for the total fee and expenses. The parties will give the examiner the name, position, and address of their designated local representatives to whom the examiner will forward copies of billings and reports.

(8) Examiner's Report.

(a) After the employee and/or representative have been given an opportunity to review the grievance file and an appropriate inquiry is conducted, the examiner must prepare a report of findings and recommendations. The report must show a determination of the factual issues in the grievance, based on analysis of evidence secured through the inquiry and review of the grievance file. For each relevant and timely issue, the examiner must analyze and weigh the evidence.

(b) If the examiner finds that the employee has a reasonable basis for his/her grievance, the examiner must then consider whether the remedy the employee has requested is reasonable and should be recommended.

(c) The examiner's findings for each relevant and timely issue may be organized along the following lines: (1) identification of the issue; (2) analysis and weighing of evidence pertinent to the issue; and, (3) statement of whether the employee's grievance is valid and the requested remedy is appropriate, with reasons for the findings and recommendations.

(d) If the examiner excluded any matter raised in the grievance because the matter was not covered under the grievance system, the report should explain why he/she believes it is not covered.

(e) The examiner must transmit the grievance file containing the report of findings and recommendations to the deciding official and must furnish the employee or representative a copy of the report within 30 days after conclusion of the inquiry or receipt of a transcript, if a hearing transcript is required.

(f) If the examiner finds programmatic or management deficiencies unrelated to the issues under review and which have no impact on the recommendations, these should be brought to the attention of the deciding official in a separate memorandum which is not to be a part of the grievance file.

o. Final Grievance Decision.

(1) Within ten (10) calendar days of receipt of the examiner's report, the deciding official must take one of the following actions:

(a) Accept the examiner's recommendation and issue the decision on the grievance;

(b) Grant the remedy sought by the employee, without regard to the examiner's recommendation; or

(c) If a determination is made that the examiner's recommendations are unacceptable, he/she must submit the case for decision to the Departmental Director of Personnel.

(2) If the final decision on the merits of a grievance results in a loss of pay, e.g., a suspension of less than 14 days, AWOL charges, etc., an employee may request that the Director of Personnel, DOI review the decision.

(3) The decision on a grievance must be in writing, and must contain the following information:

(a) Findings on all issues covered by the examiner's inquiry;

(b) A statement as to whether the grievance is found to be justified and the specific corrective action to be taken, if any; and,

(c) The employee's further review rights, if applicable.

(4) A copy of the deciding official's grievance decision should be sent to the examiner and to the Chief Personnel Appeals Examiner, OHA.

p. Grievance File. A grievance file must be established for each grievance accepted under the formal procedure. The file will be maintained and disclosed consistent with the Privacy Act and the Freedom of Information Act. The grievance file established by the employee's Servicing Personnel Office is available to the employee and representative and must not contain any document that is not available to the employee. It will ultimately contain:

- (1) The written informal complaint, if any;
- (2) A written summary of action and results, or lack of action, during the informal procedure if the grievance presentation and response were oral;
- (3) Copies of advance notice, replies and final decision where a minor adverse action is involved (370 DM 752);
- (4) Copies of letters of reprimand, warning, etc., where such matters are at issue;
- (5) Copies of personnel action documents (SF-50), where appropriate;
- (6) The complete hearing record, if one is conducted;
- (7) The examiner's summary of an inquiry, if one was held;
- (8) The examiner's findings and recommendations;
- (9) The written decision of the deciding official, or a statement of reasons for referring the grievance to higher authority for decision; and
- (10) Final grievance decision, if any, by a higher level authority.

5. Reporting Requirements. None.

6. Effect On Other Documents. Supersedes PER-22, dated 10/27/86, and PER-22-1, dated 4/8/88.

7. References.

- a. Performance Appraisal Directive (PER-14)
- b. Employee Grievances (370 DM 771)

8. Effective Date. Upon issuance.

9. Contact. Division of Personnel, Branch of Employee Management Relations, FTS 208-2848.

10. Keywords. Grievance, Deciding Official, Relief

11. List of Appendices.

- Appendix A - Office of Hearings and Appeals Examination Procedures
- Appendix B - Office of Hearings and Appeals Expedited Hearing Procedure
- Appendix C - Office of Surface Mining Reclamation and Enforcement
Grievance Procedure

APPENDIX A

OFFICE OF HEARINGS AND APPEALS EXAMINATION PROCEDURES

1. Processing by the Examiner.

a. As soon as possible after receipt, the examiner reviews the grievance file, eliminates from consideration any matters not covered under the grievance system and notifies the parties accordingly. For matters covered under the system, the examiner conducts an inquiry of a nature and scope appropriate to the issues involved. At the examiner's discretion the inquiry may consist of:

- (1) The securing of additional documentary evidence;
- (2) Personal interviews;
- (3) A group meeting;
- (4) A hearing (when necessary to obtain the facts and when issues as described in b.(5) below are present); or
- (5) Any combination of (1) through (4).

b. The following characteristics of types of inquiry may be useful as a general guide to help assure that comparable inquiry is made for comparable matters.

(1) Securing of Documentary Evidence. In a sense, every grievance may involve the securing of some kind of documentary evidence which would be considered by an examiner. An inquiry conducted primarily on documentary evidence would involve decisions concerning which regulation is applicable and decisions where there is no real dispute of fact.

Characteristics:

- Issues concern claim of improper application or interpretation of policies and regulations established by another office at a higher level; and/or
- The application or interpretation requires specialized knowledge or judgment to ensure accuracy and consistency. There is essential agreement about the facts.

(2) Personal Interviews. An inquiry consisting primarily of personal interviews involving problems arising out of the employee's immediate work environment. The need for documentary evidence is minimal.

Characteristics:

- Unfavorable work environment;
- Situations within the employee's work group;
- Impact of local policies, regulations or directives;
- Local managers have discretion and are free from specific outside requirements.

(3) Group Meeting. It is rare for a group meeting to be the only method of inquiry. As a technique, it would probably be combined with personal interviews and, perhaps, documentary evidence. Issues to be covered in a group meeting usually involve opinions or judgments which are subjective in nature as opposed to serious disputes of facts which are better handled at a hearing.

Characteristics:

- Issues involving attitudes and opinions rather than regulatory or policy questions per se;
- Issues where the manager (supervisor) has discretion and is free from specific outside requirements; or
- Issues concerning less severe disciplinary actions.

(4) A Combination of the Above. Combinations of securing documentary evidence, personal interviews and a group meeting usually involve complex issues.

Characteristics:

- Improper application, interpretation of policy and regulations; or,
- Improper application, interpretation of procedures, in combination with subjective consideration or evaluation of employee qualifications, capabilities, potentials or behavior.

(5) Hearing. The decision to conduct a hearing involves the determination by the grievance examiner that it is the only way to satisfactorily resolve a complex dispute with serious disagreement of fact by witnesses. The decision to schedule a hearing is not the prerogative of the grievant. Concurrence of the Chief Personnel Appeals Examiner, OHA, must be secured before a hearing is scheduled. While there may be preliminary interviews, meetings or obtaining of documentary evidence, a hearing is intended to be a last resort method of developing the facts at issue.

Characteristics:

- Suspensions of 14 days or less and other cases of loss of pay such as AWOL charges;
 - Violations of employee statutory or regulatory rights;
- or,
- Separations of certain excepted employees covered in 370 DM 752.

c. Management officials and employees will cooperate with the examiner in promptly providing such assistance as the examiner deems necessary for the inquiry. The examiner schedules proceedings so that, whenever possible, the inquiry is begun within 21 days after the date the grievance is assigned. Delays in the proceedings will be held to an absolute minimum.

d. In order to insure completely fair and impartial consideration by the examiner, ex parte communications with the examiner by any parties to the grievance are prohibited.

e. The examiner is vested with delegated authority to administer an oath or affirmation, to rule on offers of proof, to receive relevant evidence and to regulate the course and conduct of the inquiry.

f. The examiner will permit the grievant to appear in person to present the grievance, if a hearing is held. However, there may be occasions by reason of unusual location or other extraordinary circumstances that a personal presentation is not administratively feasible. In such an event, the examiner should state why the grievant was not present and certify that the written presentation includes all pertinent facts.

g. When the examiner holds a group meeting or hearing, a labor organization which holds exclusive recognition for the bargaining unit in which the employee works, is given the opportunity to have an observer present. The observer is permitted to state the views of the union at an appropriate time as determined by the examiner. The right of the labor organization to be present must not impair the right of the employee to handle his/her own grievance and to choose his/her own representative (unlike a grievance under the negotiated procedure where only the labor organization or someone it approves can represent the grievant).

h. The burden of proof will be carried by the grievant unless the issue grieved is a disciplinary or adverse action, in which case the party who initiated the challenged action bears the burden of proof. In the latter situation, management must establish the facts it asserts by a preponderance of evidence demonstrating that its action was for such cause as would promote the efficiency of the service, and it is the responsibility of the grievant to support any claim made in his/her defense.

1. The examiner's opinion may not be substituted for the judgement of management in initiating or choosing a disciplinary action unless there is evidence that management acted arbitrarily or unreasonably.

j. In recommending any reduction of a disciplinary penalty, the examiner should find persuasive evidence that the severity of discipline imposed was not reasonable in view of: (1) the gravity of the offense; (2) past practice in enforcing the rule; (3) the employee's past record and length of service; and/or (4) mitigating circumstances not previously considered by management in determining the penalty.

k. The examiner will hold the inquiry as near the place to where the grievance occurred as practicable and shall conduct the inquiry expeditiously and in a manner to obtain a clear understanding of the facts. The inquiry may be conducted at another site for the convenience of the parties.

2. Record of Hearing.

a. If a hearing is held, the examiner will determine whether the hearing will be reported by verbatim transcript or written summary. The examiner must include all pertinent documents submitted and accepted into the hearing record. When the hearing is reported verbatim, the examiner will make the transcript a part of the record of the proceedings.

b. When the hearing is not reported verbatim, the examiner must have a suitable summary of the pertinent testimony prepared. If the parties agree to the summary, they should sign it. If they do not agree with it, they should submit written exceptions which, together with the summary, must be part of the hearing record.

c. The examiner must include the record of the hearing in the grievance file. The employee or representative will be given a copy of a summary of the hearing and the report of the examiner's findings and recommendations. They may also review the transcript.

APPENDIX B

OFFICE OF HEARINGS AND APPEALS EXPEDITED HEARING PROCEDURE

Expedited Hearing Procedure.

a. Notwithstanding any other provisions of the directive, the following expedited hearing procedure may be used with mutual written consent of both the deciding official and the grievant:

- (1) The inquiry will be informal;
- (2) No brief shall be filed or transcripts made;
- (3) There shall be no formal evidence rules;
- (4) Each party's case shall be presented by a previously designated representative;
- (5) The examiner will have the obligation of assuring that the necessary facts and considerations are brought before him/her by the representative in the most expeditious manner;
- (6) A single case should normally not require more than four (4) hours to be heard with each party being allowed up to two (2) hours to examine witnesses and to make opening and closing statements. The examiner shall ensure that the length of the inquiry is not unnecessarily extended because of irrelevant or repetitious testimony, etc.;
- (7) Either part may present "expert" witnesses to testify. The commonly-accepted definition of an expert will be used to determine whether the proposed witness can be considered an expert; i.e., one who may have no firsthand knowledge of the case, but who has special skill, training, or experience in a particular field, and without whose technical assistance the examiner may be unable to understand the relationship between the facts and the conclusions to be drawn from these facts. The party presenting such an expert will bear liability for any expenses and fees incurred;
- (8) The examiner will be urged to issue a bench decision at the inquiry but, in any event, shall render the decision within forty-eight (48) hours after conclusion of the hearing. This decision shall be based on the record developed by the parties before and at the inquiry and shall include a brief written explanation of the decision; and,
- (9) These expedited procedures supersede and substitute for the customary grievance examination procedures.
- (10) The decision of the examiner may be either of advisory or binding authority based upon previous agreement of the parties to that effect.

b. The grievant may not select the Expedited Hearing Procedure and subsequently request a full hearing.

APPENDIX C

GENERAL OUTLINE
OSM GRIEVANCE PROCEDURE

STEPS

TIME FRAME

INFORMAL PROCEDURE

Employee initiates
informal grievance

* 1-15 days following
specific act or
occurrence or awareness
of act or occurrence
OR
* anytime for continuing
condition

Management issues decision
on informal grievance

1-7 days following receipt
of grievance

EMPLOYEE SATISFIED; GRIEVANCE TERMINATED
EMPLOYEE NOT SATISFIED;
FORMAL PROCEDURE

Employee files formal
grievance to SPO

1-7 days following receipt
of informal decision

SPO accepts, returns, or
rejects grievance. If
accepted, SPO refers to
deciding official.

1-7 days following receipt
of formal grievance

--employee requests review
of rejected grievance

1-15 days following
receipt of rejection

Deciding official issues
decision on formal
grievance

1-21 days following
receipt of grievance file

EMPLOYEE SATISFIED; GRIEVANCE TERMINATED
EMPLOYEE DOES NOT RESPOND; GRIEVANCE TERMINATED
(Refer to Directive for details)

EMPLOYEE NOT SATISFIED:
OFFICE OF HEARINGS AND APPEALS (OHA) PROCEDURE

Employee requests OHA
hearing/inquiry

1-7 days following receipt
of formal grievance
decision

OHA hearing/inquiry begins

1-21 days following
appointment of examiner

Examiner's report to
parties

1-30 days following
receipt of transcript or
conclusion of inquiry

Final administrative
grievance decision

1-10 days following
receipt of examiner's
report