

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service

Chapter CC26--Conditions of Service
Subchapter CC26.1--Officer Responsibilities and Conduct
Personnel INSTRUCTION 5--Grievances

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Section A. Purpose and Scope

1. This INSTRUCTION provides the procedures to be used by active-duty officers of the Commissioned Corps of the Public Health Service (PHS) in seeking prompt and fair resolution of issues related to working conditions.
2. This procedure does not apply to the following:
 - a. Board recommendations or decisions, including but not limited to, promotion, assimilation to the regular corps, long-term training, special pay, retention, retirement, separation, and reduction-in-grade;

- b. Situations where there are other established hearing or appeal procedures, including but not limited to, equal opportunity (see Subchapter CC26.1, INSTRUCTION 6, of the Commissioned Corps Personnel Manual (CCPM)) or payment under Department of Defense, Office of Hearing and Appeals;
- c. Situations involving reduction-in-strength;
- d. Situations involving officers who are detailed in accordance with 42 U.S.C. 215 to a non-PHS program. Officers who are detailed to non-PHS entities must use the grievance procedure of the Agency to which detailed unless the agreement between PHS and the Agency to which the officer is detailed provides otherwise; and
- e. Reassignments within or between two Agencies/Operating Divisions (OPDIV)/Programs may be grieved to the limited extent that they are believed to be arbitrary, capricious, or inconsistent with commissioned corps policy and procedures.

Section B. Authority

Section 215 (b) of the PHS Act (42 U.S.C. 216(b)) authorizes the Secretary to promulgate regulations necessary to administer the Commissioned Corps of the PHS. The authority to administer the PHS Commissioned Corps personnel system was re-delegated to the Assistant Secretary for Health (ASH) as provided at 53 Federal Register 3457, February 5, 1988. The ASH re-delegated to the Surgeon General (SG) those authorities necessary to administer the PHS Commissioned Corps personnel system as provided at 53 Federal Register 5046-5047, February 19, 1988.

Section C. Definitions

1. A grievance, as covered by this INSTRUCTION, is a request by an active-duty commissioned officer for personal relief in a matter of concern or dissatisfaction (such as working environment, working relationships with supervisors, other personnel, or officials), which is subject to the control of Department of Health and Human Services (HHS) management. However, situations which result from actions mandated by statute, regulations, or stated PHS policy are covered only when the actions taken were capricious, arbitrary, or not in consonance with the applicable law, regulations, or policy.
2. The Primary Reviewer. Is the immediate supervisor. If the primary reviewer is the OPDIV Head, that individual will be the final reviewer.

3. The Secondary Reviewer. The next higher level official of the supervisor possessing authority over the subject matter of the grievance. If the secondary reviewer is the OPDIV Head, that individual will be the final reviewer.
4. The Final Review Official. The next higher level official of the secondary reviewer within the OPDIV possessing authority over the subject matter of the grievance. The highest level reviewer will be the OPDIV Head. In the case of an officer assigned to a Regional Office, the highest level of review shall be the Regional Director.
5. Days. All references to days indicate calendar days.
6. Detail. Duty station assignment with an entity outside PHS as authorized by 42 U.S.C. 215 and implemented in INSTRUCTIONS 5, 6, 7, and 8, "Details," Subchapter CC23.5 of the CCPM.

Section D. Policy

1. Officers and managers will display attitudes of professionalism, cooperation, reasonableness, and maturity in the conduct of official business.
2. Officers have the right to grieve certain official actions with which they disagree. Officers will not be restrained or deterred from exercising that right. Any officer or employee who interferes with the officer's right or who retaliates against an officer for exercising that right shall be subject to disciplinary action.
3. Effect of Grievance on PHS Actions. The filing of a grievance does not, in any way, affect the initiation or processing or implementation of any personnel action including, but not limited to:
 - a. Fitness-for-duty determination.
 - b. Non-Duty With Pay, reassignments, temporary duty, permanent change of station, or separations.
 - c. Disciplinary actions in accordance with INSTRUCTION 1, "Disciplinary Actions," Subchapter CC46.4 of the CCPM.
 - d. Temporary Promotion Review Board determinations.
4. Effect of a transfer or separation on processing a grievance.
 - a. The transfer or reassignment of an officer will not affect the processing of the grievance unless such a transfer renders the issue

- moot. The officer may seek reconsideration of a determination that a matter is moot in accordance with Section F(4) below.
- b. The processing of a grievance will be terminated upon the officer's submission of a request for separation.
5. Withdrawal of a Grievance. The officer may withdraw his/her grievance at any time by submitting a signed memorandum to his/her immediate supervisor.
 6. If the grievance is withdrawn, all materials and/or documents submitted by the officer will be returned to the officer.
 7. Records of Grievances.
 - a. The complete grievance record will be submitted to the Agency/OPDIV/Program Commissioned Corps Liaison for maintenance upon completion of the grievance process by the official rendering the final decision.
 - b. Information generated during the grievance process which indicates misconduct on the part of the officer, manager, or others, may be used to support disciplinary action(s).
 - c. The aggrieved officer should maintain his/her own personal file of all documents involved in his/her grievance.
 - d. Grievances will not be made a part of the Official Personnel File.
 8. Timely Action. Prompt resolution of grievances is essential to the fulfillment of the mission of the Service and the efficient conduct of business. The time limits provided in Section F. of this INSTRUCTION should be followed by the officer and management. Every effort should be made to resolve the grievance at the lowest level possible. To that end, the officer and manager are encouraged to allow flexibility in accommodating reasonable delays in the filing and processing of grievances.
 9. PHS Support of Grievance Actions.
 - a. An officer may consult with the Agency/OPDIV/Program Commissioned Corps Liaison and/or their Chief Professional Officer (CPO) for clarification of the PHS policy and procedures.
 - b. An officer may, at his/her own expense, obtain such counsel or witnesses as may be considered necessary to process a grievance. PHS lacks the authority to pay, or to reimburse an officer, for any costs incurred incident to a grievance presentation, processing, or resolution.

- c. An officer may request station leave or annual leave to prepare and present a grievance. Although managers are encouraged to accommodate such requests, a request may be denied based on program needs.

Section E. Elements of a Grievance

1. A grievance must:
 - a. be in writing;
 - b. be submitted within the time limits established (see Section F.);
 - c. state concisely the facts of the matter or incident(s) giving rise to the grievance; and
 - d. specify the personal remedy sought. (A request for disciplinary action against another person will not be considered as a personal remedy.)
2. New matters must be addressed in a new grievance. The deciding official may consolidate the grievances and provide one response when he/she determines it appropriate to do so.

Section F. Procedures

The following procedures provide three levels of presentation of a grievance. Each level must be exhausted before proceeding to the next level. Failure to follow these procedures may result in delay or denial of the processing of the grievance. Officers/Agencies/OPDIVs/Programs must consult with the Policy Coordination Staff, Office of the Director, Division of Commissioned Personnel (DCP), when negotiating settlements which may require action by DCP, such as orders or amending an officer's form PHS-838, "Commissioned Officers' Effectiveness Report."

1. Initial Presentation.
 - a. Within 10 days of the incident or action giving rise to the grievance, the aggrieved officer will submit the written grievance to his/her immediate supervisor. The officer may request an extension of the time to file a grievance if a good cause can be shown, such as incapacitation or deployment.
 - b. The supervisor will provide the officer with written acknowledgment of receipt of the grievance within 10 days of receipt. This notice will also indicate whether the grievance will be reviewed or rejected for untimeliness or other procedural defects. If rejected, the notice will inform the officer of their appeal rights to the second level reviewer.

- c. The immediate supervisor will consider the grievance and inform the aggrieved officer, in writing, of his/her decision and the reasons therefore within 30 days of receipt of the grievance. This time frame may be extended by written agreement between the primary reviewer and the officer. The decision may be:
- (1) Granting of the remedies sought in full;
 - (2) Denial of the remedies sought. The reason(s) for the denial will be cited and the name, title, and address of the official to whom an appeal may be sent will be included;
 - (3) Offer a solution which in the primary reviewer's judgement will resolve the matter; or
 - (4) A determination that he/she lacks the authority to resolve the matter. In this situation, the matter will be referred to the next level supervisory official who has the authority to resolve the matter. If the case is referred, it continues to be a part of the "Initial Presentation" until the appropriate supervisory official (hereinafter referred to as the primary reviewer) has rendered a written decision on the matter. If the "Initial Presentation" is to the OPDIV Head or Regional Director, then the OPDIV Head or the Regional Director will also serve as the final reviewer.
- d. Within 10 days of receipt of the decision, the aggrieved officer must indicate in writing to the primary reviewer:
- (1) Acceptance in full or in part; or
 - (2) Rejection in full or in part with notice of appeal (See Subsection 2 below).
- e. If the officer accepts the decision or does not appeal the decision within 10 days, the decision becomes final. All documents associated with the grievance will be submitted to the Agency/OPDIV/Program Commissioned Corps Liaison for inclusion in the Station File. A copy must be sent to DCP.

2. Secondary Presentation.

- a. If the officer rejects all or part of the decision or if the primary reviewer fails to respond in a timely manner, the officer may appeal to the second level reviewer. Within 10 days of the receipt of the decision or, when no decision is rendered, within 10 days following the due date of a decision the officer shall submit to the primary reviewer a memorandum stating:

- (1) Intent to appeal,
 - (2) Reasons for rejecting the decision, and
 - (3) Request the primary reviewer to forward the initial decision to the next higher level official who has authority over the subject matter of the grievance.
- b. The officer will submit a copy of this memorandum to the secondary reviewer.
 - c. The primary reviewer will forward the memorandum and all documents from the initial presentation to the secondary reviewer promptly within 5 days of the request.
 - d. The secondary reviewer will review the presentation and render a decision, in writing, within 30 days of receipt of the grievance. The secondary reviewer may grant or deny the relief requested. The decision will also include the name, title, and address of the official designated to receive the final appeal, if the aggrieved officer is dissatisfied with the decision of the secondary reviewer.
 - (1) Within 10 days of receipt of the decision, the aggrieved officer must indicate in writing:
 - (a) Acceptance in full or in part; or
 - (b) Rejection in full or in part with notice of appeal (See Subsection 3 below).
 - (2) If the officer accepts the decision of the secondary reviewer or does not appeal within 10 days, the secondary reviewer's decision becomes final and all documents associated with the grievance will be forwarded to the Agency/OPDIV/Program Commissioned Corps Liaison for inclusion in the officer's Station File. A copy may be sent to DCP.
3. Final Appeal.
- a. If the officer rejects all or part of the decision or if the secondary reviewer fails to respond in a timely manner, the officer may appeal to the final reviewing official within 10 days of receipt of the decision or, when no decision is given, within 10 days following the due date of the decision. The officer must submit a memorandum to the secondary reviewer stating:
 - (1) Intent to appeal;

- (2) Reason for rejecting the decision; and
 - (3) Request the secondary reviewer to forward the grievance to the official designated to review the final appeal in the notice of the secondary decision.
 - b. The officer must submit a copy of this memorandum to the final reviewer.
 - c. The official who decided the secondary presentation will forward all documents from the previous presentations to the final deciding official.
 - d. The final deciding official, upon receipt of the appeal, will acknowledge receipt and take the following action as appropriate:
 - (1) Grant remedies sought;
 - (2) Deny remedies sought and state the reasons for that decision;
 - (3) Make findings and formulate a decision for resolution other than requested remedies; or
 - (4) Appoint a special investigator to make findings and recommendations for resolution of the grievance. These recommendations, however, are not binding on the deciding official. The deciding official will notify the concerned parties of the appointment of a special investigator and a timetable for resolution of the matter.
 - e. The final deciding official, within 30 days of receipt of the grievance, or within 60 days if a special investigator is appointed, will notify the aggrieved officer of his/her decision.
 - f. The decision of the final deciding official will be final. All documents associated with the grievance will be forwarded to the Agency/OPDIV/Program's Commissioned Corps Liaison for inclusion in the officer's Station File. A copy may be sent to DCP for inclusion in Grievance files system of records 09-40-0004, "PHS Commissioned Corps Grievance, Investigatory and Disciplinary Files, HHS/PSC/HRS."
4. Requests for Reconsideration.
- a. An officer may request that the SG reconsider the final decision rendered when the officer believes the final decision may be in violation of law, executive order, regulation, policy, or which appears to be arbitrary and capricious. The officer must submit in writing,

within 15 days, a memorandum specifying the basis for the request and provide supporting documentation. The request must be submitted to:

Office of the Surgeon General
5600 Fishers Lane, Room 18-67
Rockville, MD 20857-0001
Telephone: (301) 443-4000
Fax: (301) 443-3574 or (301) 443-8590

b. The SG may:

- (1) Deny the request without further review;
- (2) Remand the matter to the Agency/OPDIV/Program Head for further review upon a finding that the decision was in violation of law, regulation, policy, executive order, or appears arbitrary or capricious;
- (3) Remand the matter to the Agency/OPDIV/Program Head for further investigation of facts; or
- (4) Appoint one or more special investigators to conduct an objective and thorough investigation of the facts and to develop recommendations. All expenses associated with such an appointment will be paid by the Agency/OPDIV/Program to which the officer is assigned.

c. The SG, or his/her designee, within 30 days of receipt of the grievance, or within 60 days if a special investigator is appointed, will notify the aggrieved officer of his/her decision.

d. Board for Correction - An officer who feels that an error or injustice remains in his/her record may make application to the Board for Correction ONLY after exhausting all administrative remedies. Failure to initiate or prosecute a grievance or other administrative remedies shall be construed as a waiver of the right to proceed with an application to the Board. Such applications should be addressed to:

Board for Correction of PHS Commissioned Corps Records
5600 Fishers Lane, Room 16A-53
Rockville, MD 20857-0001
Telephone: (301) 443-6268

Section G. Cross References

1. INSTRUCTIONS 5, 6, 7, and 8, "Details," Subchapter CC23.5 of the CCPM.

2. INSTRUCTION 6, "Equal Opportunity," Subchapter CC26.1 of the CCPM.
3. INSTRUCTION 1, "Disciplinary Actions," Subchapter CC46.4 of the CCPM.
4. INSTRUCTION 1, "Board for Correction of PHS Commissioned Corps Records," Subchapter CC49.9 of the CCPM.

Section H. Historical Notes

This INSTRUCTION replaced INSTRUCTION 5, "Grievances," Subchapter CC26.1 of the CCPM, Transmittal No. 454, dated September 5, 1985, which provided clarification of grievance procedures, removal of ambiguities (e.g., will v. shall v. may), and implementation of more flexible time lines.

PHS Commissioned Corps No. 454, dated September 5, 1985, revised INSTRUCTION 5, "Grievances," Subchapter CC26.1 of the CCPM, Transmittal No. 218, dated July 29, 1976, to further clarify the mechanism by which officers of the Commissioned Corps of the PHS may obtain prompt and fair resolution of grievances.

PHS Commissioned Corps No. 218, dated July 29, 1976, amended INSTRUCTION 5, "Grievances," Subchapter CC26.1 of the CCPM, Transmittal No. 210, dated April 23, 1975, to provide (1) that a decision on the matter shall be rendered by the official one level above the official who decided on the secondary presentation, and (2) that the ASH may, at his/her discretion, accept an appeal from that decision.

PHS Commissioned Corps No. 210, dated April 23, 1975, and cited as INSTRUCTION 5, "Grievances," Subchapter CC26.1 of the CCPM, established a mechanism by which PHS Commissioned Corps officers may obtain prompt and fair resolution of matters of concern or dissatisfaction.

Section I. Privacy Act Provision

Grievance records are subject to the Privacy Act of 1974. The applicable system of records is 09-40-0004, "PHS Commissioned Corps Grievance, Investigatory and Disciplinary Files, HHS/PSC/HRS," sets forth the procedures to be followed in the maintenance of these records.