



ARKANSAS DEPARTMENT OF THE MILITARY
OFFICE OF THE ADJUTANT GENERAL
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ASA HUTCHINSON
GOVERNOR

KENDALL W. PENN
MAJOR GENERAL
THE ADJUTANT GENERAL

NGAR-DOTM

15 October 2019

**MEMORANDUM FOR DEPARTMENT OF THE MILITARY (DOTM) STATE
EMPLOYEES**

SUBJECT: Department of the Military (DOTM) Policy 46-2019, Uniform Grievance Procedures

1. The DOTM Human Resources is responsible for the creation, updating, revision, and dissemination of state policies and procedures. These policies and procedures assist the agency in maintaining an effective workforce.
2. The purpose of this policy is to inform all state employees and supervisors of the updated Uniform Grievance Procedures as defined by Arkansas Code Annotated §§ 21-1-701 *et seq.*
3. Point of contact for this memo is Scott Stanger at (501) 212-5167.

A handwritten signature in black ink, appearing to read "Kendall W. Penn".

KENDALL W. PENN
MAJOR GENERAL
The Adjutant General

Encl.
Uniform Grievance Procedures

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DEPARTMENT OF THE MILITARY Uniform Grievance Procedures

PURPOSE

This grievance procedure is established pursuant to Arkansas Code Annotated §§ 21-1-701 *et seq* in order to provide employees with a prompt review, impartial consideration and an equitable disposition of their grievance. Any employee who presents a grievance in good faith and in a reasonable manner shall be free from restraint, interference, discrimination or reprisal.

POLICY

It is the policy of this agency that all employees are given the opportunity, through established steps and procedures, to resolve a grievance that they believe has adversely affected their employment. It is also our policy that efforts will be made to settle these grievances within a reasonable amount of time. The grievance procedure is not intended, nor will it be allowed to become, a barrier to the supervisor/employee relationship.

Employees should only submit grievances made in good faith, expressed in reasonable terms, containing specific causes for the grievance, reasonable corrective action desired, and sufficient information upon which to base decisions.

The Department of the Military and the employee shall agree to take all reasonable measures to resolve issues as quickly as possible therefore informal discussions between the supervisory employee and employee are encouraged.

The grievance process may be terminated at any time by the employee should an agreement with the employee be reached. A party may be represented by an attorney or other representative at any step of the grievance procedure except during any informal discussions occurring prior to the filing of a grievance. Attorney's fees shall not be awarded.

Access to the Grievance Procedures are at the employee's option and do not create any expectation of continued or reinstated employment. The Grievance Procedure is not intended to alter the terms of the employment-at-will doctrine and its exceptions as defined by the Arkansas Supreme Court. They do provide an avenue for review and resolution of internal situations. This procedure is not intended to compromise the rights of management to direct work activity in accomplishing the Department of the Military's goals and missions.

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ELIGIBLE EMPLOYEES

1. Any person regularly appointed or employed in a position for which he or she is compensated on a full-time basis or on a pro rata basis per year may file a grievance under this policy, with the exception of employees who hold appointed positions, supervisory or management positions and employees who are in a new-hire probationary status.
2. Temporary, intermittent, and extra help employees do not have access to this procedure. Supervisors and managers also do not have access to this procedure.
3. An otherwise eligible employee who transfers, promotes, or voluntarily or involuntarily demotes within an agency is typically placed in a probationary status; however, the employee is not prohibited from accessing the grievance process during this time.

DEFINITIONS

1. **Administrative Record** –the case file specific to each grievance assembled according to the Office of Personnel Management (OPM) Administrative Record Rules.
2. **Administrative Review Hearing** – an internal fact-finding hearing before a Hearing Officer.
3. **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.
4. **Agency** – The Department of the Military.
5. **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 Adjutant General or his or her designee.
6. **Communicating in Good Faith** – Making a verbal or written report at a time and in a manner that gives a state agency reasonable notice of the need to correct waste or a violation.
7. **Disciplinary Action** – Suspension or termination of a Department of the Military employee.

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8. **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 or extended new-hire probationary status is not an employee for purposes of these rules and procedures. **An employee does not include a supervisory employee. The eligibility of each submission shall be reviewed pursuant to Arkansas Code Annotated §§ 21-51-701.**
9. **Grievance** – a complaint by an employee resulting from a termination or suspension.

No other forms of discipline, discrimination, harassment, retaliation, approval/denial compensatory time, compensation, performance evaluations, performance improvement plans, or any matters which are beyond the control of The Department of the Military or are mandated by law are grievable.
10. **Grievance Officer** – the person(s) designated by the state agency as having the responsibility for acting as the liaison between the employee and the state agency.
11. **Hearing Officers** – an impartial committee of persons (“Panel”) appointed to review the facts of the grievance and make a recommendation for resolution to The Adjutant General or his or her designee.
12. **Party** – the employee filing the grievance or the supervisory employee against whom the grievance has been filed.
13. **State Employee Grievance Appeal Panel (“SEGAP”)** – an impartial appeal panel established to review the facts of the grievance and issue a binding decision.
14. **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.
15. **Violation** – An infraction or a breach which is not of a merely technical or minimal nature of a state statute or regulation, of a political subdivision ordinance or regulation, or of a code of conduct or code of ethics designed to protect the interest of the public or a public employer.
16. **Waste** – A public employer’s conduct or omissions which result in substantial abuse, misuse, destruction or loss of public funds, property, or manpower belonging to or derived from state or local political subdivision’s resources.

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17. **Whistle-Blower** – An employee who witnesses or has evidence of waste or a violation while employed with The Department of the Military, and who Communicates in Good Faith or testifies to the waste or violation, verbally or in writing, to one of the Employee's superiors, to an agent of The Department of the Military, or to an appropriate authority, provided that the communication is made prior to any Adverse Action by The Department of the Military.

PROCEDURES

1. Initiation of Grievance-Time Limit:

The employee has five (5) business days from the date of the termination or suspension to submit the Grievance Complaint Form to the Department of the Military Grievance Officer. An employee shall complete the Grievance Complaint Form completely and provide sufficient information detailing the nature of the disputed action. Incomplete forms will not be accepted.

2. Determination of Grievable Matters:

The Agency Grievance Officer will consult with The Department of the Military Legal Advisor upon receipt of an employee grievance to ensure the grievance meets requirements. The Department of the Military Legal Advisor will issue an advisory opinion. If the Agency determines that the complaint is not grievable based upon policy, the Agency Grievance Officer will inform the employee that the grievance shall not proceed.

Non-Grievable Matters include, but are not limited to:

- a. Guidance or advice regarding the grievance process given by Agency Grievance Officers or by the Office of the Staff Judge Advocate;
- b. Approved Department of the Military policies, procedures, or guidelines;
- c. Annual Performance Evaluation;
- c. Matters governed by law, regulation or executive orders that are outside the department's control;
- d. Employee Counseling Statements and Performance Improvement Plans;
- e. Reduction-in-force;
- f. Work reassignments, including days off and shifts;

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- g. Complaints against co-workers;
- h. Complaints that request a remedy to have a supervisor or other employee disciplined;
- i. Compensation and;
- j. Conditions beyond the control of department management or otherwise mandated by law.

THE GRIEVANCE PROCESS

Once a determination has been made that the complaint is subject to this policy, the matter will proceed through the grievance process.

1. **Step 1 – Internal Agency Review Panel Hearing:**

- a. Upon receiving the employee's request for an Internal Agency Review Panel Hearing, the Agency Grievance Officer shall forward the request to the Agency Director. The Agency Director shall appoint a panel consisting of a Hearing Officer and two (2) panel members to conduct an internal review hearing. All charged parties and witnesses are required to attend. The hearing shall be recorded and transcribed, and shall become part of the case file, if appealed.
- b. The Agency Grievance Officer shall be responsible for assembling the Administrative Record and providing copies to the parties, the Hearing Officer and the Panel members.
- c. **Conduct of the Internal Agency Review Panel Hearing:**
 - i. The Hearing Officer will conduct the hearing in an informal manner. The Hearing Officer will receive exhibits and take testimony, ruling on the admissibility of both. Only relevant evidence is admissible. The Hearing Officer has the discretion to exclude irrelevant and/or cumulative testimony or evidence. If accepted by the Hearing Officer the evidence shall become a part of the Administrative Record as an exhibit.

The sole issue for the trier of fact shall be whether the agency's decision concerning termination or suspension was consistent with the agency's discipline policy.

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- ii. The Agency Grievance Officer will be responsible for ensuring the hearing is recorded and is available for transcription.
- iii. Hearing will be compliant with the Arkansas Administrative Procedures Act, codified at A.C.A. § 25-15-201. A party or the Hearing Officer may “Invoke the Rule,” excluding all non-party witnesses from the hearing room except while they testify.

d. **Grievant Representation:**

The grievant may be represented by an attorney or other representative at the hearing. The Department and the grievant must inform the Agency Grievance Officer of a representative a minimum of three (3) working days before the scheduled hearing. The name, title and address of the representative must be given. Failure to provide adequate notice may cause the hearing to be rescheduled. The Agency Grievance Officer will notify the opposing side. Any attorney or other fees charged by their representative will not be reimbursed to the grievant.

e. **Witnesses:**

- i. A party may request any persons having knowledge of matters relevant to the grievance be present at the hearing to provide testimony. The grievant and the Agency will provide the Agency Grievance Officer with a list of potential witnesses and a summary of the reason for their testimony. The Agency Grievance Officer will ensure that each party’s witness list and reasons for testimony is shared with the other party. Additionally, the Hearing Officer may request to hear testimony from any persons having knowledge of matters relevant to the grievance.
- ii. The Agency Grievance Officer is responsible for notifying all Department of the Military employees called as witnesses of the date, time, and location of the hearing. The grievant is responsible for notifying any non-agency witnesses.
- iii. The grievant, the Agency, Hearing Officer and Panel members may question witnesses. If either party elects to have a representative present, only the representative may questions witnesses for that party. The Agency Grievance Officer or The Department of the Military attorney’s may not be called as witnesses unless they are charged parties or have direct, unprivileged knowledge of the acts or omissions that gave rise to the grievance. The Adjutant General or his or her designee may compel them to testify to the extent this rule will not be violated.

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f. **Notification of Decision:**

- i. Within three (3) business days of the conclusion of the hearing, the Hearing Officer shall issue a typewritten recommendation summarizing the facts and explaining in detail the basis for the Internal Agency Review Panel's decision. The Hearing Officer shall provide a copy to the Agency Grievance Officer.

The Agency Grievance Officer must provide a copy to The Adjutant General or his or her designee and to the parties. The recommendation shall become a part of the Administrative Record.

- ii. The Adjutant General or his or her designee shall review the recommendation of the internal review panel and issue a final decision within five (5) business days. At this point, the employee's access to internal resolution procedures is exhausted.
- iii. Additional time may be needed for review and to issue a recommendation and/or decision. Extensions will be granted as necessary to the Internal Agency Review Panel or to The Adjutant General and communicated to all parties.

APPEAL TO OFFICE OF PERSONNEL MANAGEMENT

If an employee is not satisfied with the decision reached by The Department of the Military Director he or she may appeal, using a form provided by Office of Personnel Management and request an appeal hearing before the State Employee Grievance Appeal Panel.

State Employee Grievance Appeal Panel appeals must be filed with the Agency Grievance Officer no later than ten (10) business days after receipt of The Adjutant General's decision.

WHISTLE-BLOWER HEARING

An employee may Appeal to the Panel using a form provided by the Agency Grievance Officer if he/she has been terminated by The Department of the Military for one of the following protected activities:

- (1) Communicating in good faith to an appropriate authority personal knowledge of the existence of waste of public funds, property, or manpower, including federal funds, property, or manpower administered or controlled by a public employer; or a violation or suspected violation of a law, rule, or regulation adopted under the laws of this state or a political subdivision of the state;

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- (2) Participating or giving information in an investigation, hearing, court proceeding, legislative or other inquiry, or in any form of administrative review;
- (3) Objecting to or refusing to carry out a directive 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; or
- (4) Reporting a loss of public funds under Ark. Code Ann. § 25-1-124.

CONFIDENTIALITY

1. All persons involved in the grievance process shall be subject to the confidentiality requirements for both programmatic documents as well as personnel files. Information concerning a grievance shall be open for inspection when such is provided in the Arkansas Freedom of Information Act. Violations of confidentiality requirements are subject to discipline. This policy as it relates to the confidentiality of records does not bind State Employee Grievance Appeal Panel.

DOCUMENTATION

1. The grievant, the charged party, and the State Employee Grievance Appeal Panel may view or have a copy of the grievance file. One copy of a written transcript will be made available to authorized persons. Tape duplication will be made available without cost to blind or visually impaired persons. The Agency Grievance Officer will retain all records related to grievances.
2. Documents sent to the grievance office after a case file has been submitted to the panel will be returned to the sender. The sender may attempt to have the additional documents entered into the record at the panel hearing. The Panel Chair will decide the relevancy of the material and may accept the additional information after the opposing side has the opportunity to review the material and make any objections. The sender should bring six (6) copies to the State Employee Grievance Appeal Panel hearing.
3. It shall be the responsibility of the Agency Grievance Officer to file a report of the grievance or complaint, the procedures followed and of its ultimate disposition, with the Department of the Military's Human Resources Administrator within ten (10) business days following final disposition of the grievance. All documentation relating to an employee grievance shall be maintained in the Agency Personnel Office and shall be placed in a file separate from the employee's personnel file. No information relating to the grievance shall become a part of any employee's permanent personnel record.
4. Grievance records shall be maintained in hard copy form in accordance to the document retention guidelines set forth by the State of Arkansas.

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EMPLOYEE'S ROLE

1. Employees and witnesses which the Hearing Officer, at each level, has determined relevant will:
 - a. Be given time during work hours to meet with an Agency Grievance Officer when the Agency Grievance Officer schedules the meeting. Excused time off may be given, with prior approval, to start the process or to participate in scheduled meetings or conferences. **That said, employees shall not work on their grievance cases during working hours.** Any other time off relating to the grievance will be subject to approved annual leave.
 - b. Be paid for travel expenses, including parking fees, when they attend scheduled fact-finding conferences or meetings with decision makers.
 - c. Have access to relevant records and documents, subject to the confidentiality requirements as set out by state or federal law.
 - d. Not use The Department of the Military resources for filing grievances, to respond to a grievance decision or to prepare requests for or respond to a request for documents, unless the forms or documents are those required by this policy.
2. Employees may:
 - a. Seek technical assistance from the Agency Grievance Officer by phone;
 - b. Have witnesses present and question them at scheduled conferences;
 - c. Choose a representative, and;
 - d. Request interpreters, readers or other types of assistance that are reasonable and necessary.

MANAGEMENT'S ROLE

1. The Department of the Military Director/designee may:
 - a. Gather facts and attempt to resolve grievances in good faith;
 - b. Assure that employees and former employees can use this procedure without interference, restraint, coercion or reprisal; and
 - c. Communicate this policy and procedure to each employee.

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2. The Department of the Military Director reserves the right to delegate any or all of these rights to designated officials subject to the provisions of policy and consistent with applicable state and federal laws or regulations.

GRIEVANCE OFFICER'S ROLE

1. The duties and responsibilities of the Agency Grievance Officers include:
 - a. Providing technical assistance;
 - b. Maintaining complete records of all grievances, complaints, and appeals;
 - c. Determining grievability; and
 - d. Coordinating between the parties and OPM for scheduling meetings, hearings, etc.

CORRECTIVE ACTION

1. When a matter is decided in favor of the grievant, the Agency Grievance Officer must ensure corrective action is taken in a timely manner. In the event documentation is to be removed or replaced, all Department of the Military files must reflect this action and the grievant will be notified when the action is completed.

GRIEVANCE FORM

This form is to be used by the employee in filing a formal grievance. The form will be filled in completely, filed within five (5) business days of the incident, and will serve without amendment, as the source document for the grievance process. All supporting documentation must be attached to this grievance form.

Employee's Name: _____ **Job Title:** _____

Employee Contact Information: _____

Employee's Work Location: _____

Immediate Supervisor's Name: _____

Next Level Supervisor's Name: _____

GRIEVANCE STATEMENT

In order for a formal grievance to be processed, all elements must be addressed (additional pages may be attached if needed):

Type of Complaint:

___ Termination ___ Suspension

(1) What was the date of the occurrence and what specific inconsistency of The Department of the Military disciplinary policy occurred which you consider constitutes a grievance? (If your complaint involves more than one basis of alleged violation, please list and number each issue separately and provide specific and factual information to support each allegation. Please use additional pages if necessary.)

(2) How have you been adversely affected by this situation?

(3) What specific action did you take to reconcile and improve the situation, including discussing it with your immediate supervisor? What has been the outcome of these efforts?

(4) List name(s) of any witness(es) and briefly state what information witness may contribute to the investigation of your complaint.

(5) What specific remedy do you request?

I swear or affirm that the above statements are true and correct to the best of my information, knowledge, and belief and that I am bringing forth this grievance in good faith.

Signature _____ **Date** _____