

**RULES
OF
TENNESSEE DEPARTMENT OF HUMAN RESOURCES**

**CHAPTER 1120-11
APPEALS**

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1120-11-.01 APPEAL.

- (1) A preferred service employee who is dismissed, demoted, or suspended may file an appeal concerning the application of a law, rule, or policy to the employment action.
- (2) An executive service employee does not have standing to file an appeal under this chapter.

Authority: T.C.A. §§ 8-30-104, 8-30-105, and 8-30-318. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012.

1120-11-.02 RESPONSIBILITY.

- (1) The Commissioner is responsible for providing and maintaining the basic standards and guidelines for implementing this chapter.
- (2) Appointing authorities are responsible for the proper implementation of this chapter throughout their respective agencies and are responsible for ensuring that all employees and supervisors are made aware of the provisions of this chapter.
- (3) The Appointing Authority shall notify an employee of the appeal process, if applicable, and relevant.

Authority: T.C.A. §§ 8-30-104, 8-30-105, and 8-30-318. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012. Amendments filed February 7, 2017; effective May 8, 2017.

1120-11-.03 BASIC STANDARDS.

- (1) An employee who files a complaint under this chapter shall do so no later than fourteen (14) calendar days after the date the employee receives written notice of a dismissal, demotion, or suspension. If an employee fails to file the complaint within the fourteen (14) calendar day period, the ability to appeal as defined in this chapter lapses and is deemed to have been waived in its entirety by the employee.
- (2) A complaint is considered as filed when the Appointing Authority, the Commissioner or the Board, depending on whether the complaint is being made under Step I, II or III as provided in Rule 1120-11-.04, receives a written or electronic copy of the complaint.

(Rule 1120-11-.03, continued)

- (3) If the term of the suspension is one (1) or two (2) days, the ability to appeal is limited to an appeal to the Appointing Authority under Step I and the Commissioner under Step II as provided in this chapter. An employee shall not be eligible to appeal a one or two day suspension to the Board.
- (4) A complaint filed under this chapter shall identify the following:
 - (a) The employment action taken against the employee;
 - (b) The specific law, rule, or policy that was allegedly violated by the agency (or by the employee under Step III if applicable); and
 - (c) The corrective action sought by the employee.
- (5) Appeal discussions held during the scheduled off-duty hours for a complainant, witness, or representative shall be considered the same as hours worked, including overtime if applicable. Employees who are required to appear as witnesses or representatives shall not be required to use leave for such periods and shall be reimbursed for travel and other expenses in accordance with the state's comprehensive travel regulations.
- (6) All decisions rendered in accordance with this chapter shall be in writing and communicated as outlined herein.
- (7) Written communication shall be considered received upon actual receipt as indicated by signature if hand delivered or three (3) days after a decision is sent via certified mail, return receipt requested to the employee's legal residence.
- (8) When awarding back pay pursuant to an order of reinstatement, the award shall be offset by income earned from alternative employment if earned during the employee's normal state working hours when employed by the state. Additionally, awards of back pay may be offset by unemployment insurance payments received.

Authority: T.C.A. §§ 8-30-104, 8-30-105, and 8-30-318. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.). Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012. Amendments filed February 7, 2017; effective May 8, 2017.

1120-11-.04 PROCEDURAL STEPS IN APPEAL. There shall be three (3) steps in the appeal process as follows:

- (1) Step I – Appointing Authority Level
 - (a) The employee submits a written complaint to the Appointing Authority within fourteen (14) calendar days after the date the employee receives written notice of a dismissal, demotion, or suspension. The written complaint shall identify the specific law, rule, or policy that was allegedly violated by the agency along with any relevant documentation.
 - (b) The Appointing Authority or designee shall conduct any investigation considered necessary, meet with the complainant in person, along with the supervisor who issued the discipline or an agency representative, and issue a written decision not later than fifteen (15) calendar days after the date the Appointing Authority receives the complaint. If independent information is collected by the Appointing Authority or designee at any time during Step I, the agency shall provide the employee with a copy of the information as soon as practicable. If the information obtained is confidential, the employee shall be

(Rule 1120-11-.04, continued)

allowed to view the information as soon as practicable, but will not be provided with a hard copy of the information. The employee shall have the opportunity to respond with a written statement to the information provided within three (3) calendar days. The Appointing Authority or designee shall not issue a decision until the employee has been afforded the opportunity to respond to any new evidence or information, unless doing so violates the fifteen-day timeframe.

- (c) The Appointing Authority shall have full authority to overturn, reduce, or amend the disciplinary action based on information gathered at the Step I discussion or information obtained afterwards, including reinstatement of leave and awards of back pay, if appropriate.
 - (d) If the Appointing Authority does not issue a decision within fifteen (15) calendar days after the Appointing Authority receives the complaint, the complainant may appeal to the Commissioner by filing the complaint in accordance with Step II.
 - (e) The presence of observers is in the discretion of the Appointing Authority or designee. The agency or employee is required to establish good cause if either has more than one (1) representative present at the Step I discussion. If the Appointing Authority or designee does not make a determination that additional good cause has been established, the representatives may be excluded from the discussion. Representatives and attorneys may not represent the parties at the Step I appeal.
- (2) Step II – Commissioner of the Department of Human Resources
- (a) If the Appointing Authority does not find in favor of the employee, the employee may appeal to the Commissioner by submitting a written complaint and all relevant documentation no later than fourteen (14) calendar days after receipt of the Appointing Authority's written decision to:

Commissioner
Tennessee Department of Human Resources
First Floor, James K. Polk Building
505 Deaderick Street
Nashville, TN 37243

- (b) The written complaint shall identify the specific law, rule, or policy that was allegedly violated by the agency and include a copy of the Appointing Authority's Step I decision, if one was issued. If a complainant fails to include a copy of the Step I decision, it is not grounds for denial of the appeal.
- (c) The Commissioner or designee shall review the complaint, any relevant accompanying documentation, and the Appointing Authority's decision, if any. The Commissioner shall issue a decision, in writing, not later than thirty (30) calendar days after the date the complaint was filed with the Commissioner. The Commissioner shall have the authority to independently obtain any additional information regarding the matter. If independent information is collected by the Commissioner, the Commissioner shall provide the employee with a copy of the information as soon as practicable. If the information obtained is confidential, the employee shall be allowed to view the information as soon as practicable, but will not be provided with a hard copy. The employee shall have the opportunity to respond with a written statement to the information provided within three (3) calendar days. The Commissioner shall not issue a decision until the employee has been afforded the opportunity to respond to any new evidence or information, unless doing so violates the thirty (30) day timeframe.

(Rule 1120-11-.04, continued)

- (d) If the Commissioner does not issue a decision within thirty (30) calendar days after the Commissioner receives the complaint, the agency or the employee may appeal to the Board in accordance with Step III.

(3) Step III – Board of Appeals

- (a) The complainant or state agency may appeal in writing to the Board of Appeals not later than fourteen (14) calendar days after the date the complainant, or in the case of a state agency, the state agency receives written notice of the action taken by the Commissioner. The written complaint shall state the specific law, rule or policy allegedly violated by the agency or the employee, along with all relevant documentation and the Step II decision to:

Board of Appeals
First Floor, James K. Polk Building
505 Deaderick Street
Nashville, TN 37243

- (b) Within ten (10) calendar days after the receipt of the appeal, the Administrative Law Judge (ALJ) assigned to assist the Board shall determine whether all procedural requirements were completed properly and in a timely manner. If a procedural requirement was not been met, the appeal shall be dismissed. If the procedural requirements have been met, the Board shall conduct proceedings in accordance with the Uniform Administrative Procedures Act as modified herein, to determine if the law, rule, or policy specified in the complaint was violated.
- (c) For purposes of this section, procedural requirements shall be construed to mean the procedural requirements at Step III of the appeal process.
- (d) Each hearing under this chapter shall occur before a panel of at least three (3) members of the Board, assisted by one (1) ALJ. The ALJ shall assist at the hearing by ruling on questions of the admissibility of evidence, swearing witnesses, advising members of the Board on the law of the case, and ensuring that the proceedings are carried out in accordance with this chapter and other applicable law. An ALJ, upon timely motion, may decide any procedural question of law.

At no time shall the ALJ take part in the determination of a question of fact. However, the Board may request an ALJ to hear the facts of the case and issue a recommendation to the Board. The Board shall convene as described herein to make a determination of the question of fact based upon the recommendation of the ALJ.

- (e) The Board shall issue its final decision in each proceeding no later than one hundred twenty (120) days after the date of the filing of the appeal with the Board.
 - (f) The Board shall have full authority to overturn, reduce, or amend the disciplinary action based on the information submitted for consideration, including reinstatement of leave and awards of back pay, if appropriate.
- (4) In order to ensure that the Board issues its final decision no later than one hundred twenty (120) days after the date of the filing of the appeal, the following conditions shall be imposed on hearings before the Board:
- (a) The parties shall participate in a pre-hearing conference no later than twenty (20) days after the filing of the appeal. At the pre-hearing conference, a hearing date shall be set.

(Rule 1120-11-.04, continued)

- (b) All discovery shall be completed no later than sixty (60) days after the filing of the appeal.
 - (c) All motions, both dispositive and non-dispositive, shall be ruled on no later than thirty (30) days before the date of the hearing.
 - (d) Extensions on the deadlines provided herein are only to be granted in extraordinary circumstances. In any event, the granting of an extension shall not extend the one hundred twenty (120) day time period for the Board to issue its decision.
 - (e) Neither party shall be entitled to file a petition for reconsideration under T.C.A. § 4-5-317.
- (5) The Board hearing shall serve as the final administrative step in the appeals procedure for preferred service employees. An order is considered final upon signature by the presiding Board member. Decisions of the Board are subject to judicial review in accordance with the Uniform Administrative Procedures Act, T.C.A. Title 4, Chapter 5.
 - (6) If the employee is successful in obtaining reinstatement to a position from which the employee has been terminated, the employee shall be reinstated to a position in the county in which he or she was employed at the time of termination. The Commissioner may grant exceptions on a case-by-case basis.
 - (7) In any case in which a successful complainant has been awarded reinstatement, back pay, or attorney's fees, the agency involved shall have a period of thirty (30) calendar days from the date of the order within which to provide reinstatement, back pay and/or attorney's fees.

Authority: T.C.A. §§ 4-5-301, et seq., 8-30-104, 8-30-105, and 8-30-318. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Amendment filed October 25, 1995; effective February 28, 1996. Amendment filed May 6, 1996; effective July 20, 1996. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012. Amendments filed February 7, 2017; effective May 8, 2017.

1120-11-.05 ATTORNEY FEES. The Board of Appeals may, at its discretion, award reasonable fees and costs upon successful appeal to an employee's attorney in accordance with the following terms and conditions.

- (1) Attorney's fees awarded by the Board shall be awarded at the same rates established by Guidelines for the Defense of Individual Employees issued by the State of Tennessee Office of the Attorney General and Reporter.
- (2) All awards of costs shall be limited to reasonable costs actually incurred. Awards of costs for travel shall be subject to the provisions of the state's comprehensive travel regulations in effect at the time the claim is made.
- (3) If the Board awards attorney fees, the prevailing attorney shall submit an affidavit detailing the hours of preparation, in hours and tenths of hours, the nature of services performed during such preparation, the hours of hearing time, and a complete itemized statement of costs claimed. Claims shall be submitted to the following address:

Board of Appeals
c/o Tennessee Department of Human Resources
First Floor, James K. Polk Building
505 Deaderick Street

(Rule 1120-11-.05, continued)

Nashville, TN 37243

- (4) In no event shall a claim be paid which is not received by the Board of Appeals within thirty (30) calendar days of the effective date of the final order.
- (5) A designee for the Board shall review all such claims for compliance with these rules, the applicable guidelines, and the Board's decision. The designee is authorized to approve payment of such claims for any amount up to and including the amount claimed.

Authority: T.C.A §§ 8-30-104, 8-30-105, and 8-30-318. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012. Amendments filed February 7, 2017; effective May 8, 2017.

1120-11-.06 REPEALED.

Authority: T.C.A. §§ 8-30-104, 8-30-105, and 8-30-318. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 25, 1994. Amendment filed October 25, 1995; effective February 28, 1996. Amendment filed May 6, 1996; effective July 20, 1996. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal filed July 5, 2012; effective October 3, 2012.

1120-11-.07 REPEALED.

Authority: T.C.A. §§ 8-30-104, 8-30-105, and 8-30-318. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Amendment filed October 25, 1995; effective February 28, 1996. Amendment filed May 6, 1996; effective July 20, 1996. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal filed July 5, 2012; effective October 3, 2012.

1120-11-.08 REPEALED.

Authority: T.C.A. §§ 8-30-104, 8-30-105, and 8-30-318. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 25, 1994. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal filed July 5, 2012; effective October 3, 2012.

1120-11-.09 REPEALED.

Authority: T.C.A. §§ 8-30-104, 8-30-105, and 8-30-318. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2). Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal filed December 14, 2010; effective May 31, 2011. Repeal filed July 5, 2012; effective October 3, 2012.