



INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE  
400 ARMY NAVY DRIVE  
ARLINGTON, VIRGINIA 22202-4704

May 23, 2006

## INSPECTOR GENERAL INSTRUCTION 1400.5

### ADMINISTRATIVE GRIEVANCE POLICY AND PROCEDURES

#### FOREWORD

This Instruction has been issued to provide general policy guidance and instructions and state responsibilities for establishing and administering the administrative grievance system of the Department of Defense Office of Inspector General (DoD OIG). It will serve as the guide to efficient and effective resolution of employee concern or dissatisfaction relating to employment that is subject to the control of management and for which the employee seeks personal relief.

It is the goal of the Inspector General (IG) to treat employees fairly and to resolve employee dissatisfaction promptly and equitably. The achievement of this goal requires conscientious and objective effort by management and employees.

Recommended changes to this Instruction will be forwarded through appropriate channels to the Assistant Director for Human Capital Advisory Services (Workforce Relations).

FOR THE INSPECTOR GENERAL:

A handwritten signature in black ink, appearing to read "SD Wilson".

Stephen D. Wilson  
Assistant Inspector General for  
Administration and Management

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## CHAPTER 1 GENERAL

### 1.1. Purpose

- a. Implements the Office of Personnel Management (OPM) requirements contained in the reference cited in paragraph 1.2.a, which requires the OIG to establish and administer a grievance system applicable to its employees.
- b. Issues grievance procedures and guidance for employees as required by the references identified in paragraphs 1.2.a and b.
- c. Establishes policy for resolving employee grievances.

### 1.2. References

- a. 5 Code of Federal Regulations, Part 771
- b. Federal Personnel Manual, Chapter 771

1.3. **Cancellation.** This Instruction cancels IG Instruction 1400.5, "Administrative Grievance Policy and Procedures," April 10, 1990.

1.4. **Applicability.** This Instruction applies to the offices of the Inspector General, the Principal Deputy Inspector General, the Deputy Inspectors General, the Assistant Inspectors General who report directly to the Inspector General, and the Director, Equal Employment Opportunity, hereafter referred to collectively as the OIG Components.

1.5. **Definitions.** See Appendix B.

1.6. **Policy.** It is the policy of the Inspector General to:

- a. Administer the procedures set forth in Chapters 2 and 3 of this Instruction in a manner that will ensure the orderly, expeditious, and equitable handling of grievances.
- b. Ensure that employees using these procedures or acting as representatives under these procedures shall not be subject to restraint, interference, coercion, discrimination, or reprisal by any supervisor or management official.

### 1.7. Responsibilities

- a. The **Director for Human Capital Advisory Services** shall:
  - (1) Develop and administer an administrative grievance procedure that complies with OPM and DoD regulations and Inspector General policy.

- (2) Make this Instruction available to employees, their representatives, and others.
- (3) Serve as primary adviser to, and representative of, management in the administration of the grievance procedure.
- (4) Establish the method of selecting grievance examiners, assure that they are properly trained, and assign them to specific cases.
- (5) Maintain the grievance files.
- (6) Assure that the same issue is not processed under both the equal employment opportunity complaint system and the grievance procedure.

**b. Supervisors and Deciding Officials shall:**

- (1) Comply with the procedures and time limits set forth in this Instruction.
- (2) Accept and attempt to resolve grievances objectively and equitably within the specified time limits.
- (3) Process grievances in accordance with this Instruction.
- (4) Obtain technical advice and assistance from Human Resources Specialist (Employee Relations) at all stages of the process.

**c. The Grievant shall:**

- (1) Comply with the procedures and time limits set forth in this Instruction;
- (2) Furnish sufficient detail to clearly identify the matter being grieved; and
- (3) Specify the personal relief being requested.

**1.8. Employee Coverage and Exclusions**

a. This Instruction applies to all OIG employees who are paid from appropriated funds and to military members who supervise covered employees.

b. Applicants for employment with the OIG are excluded.

**1.9. Grievance Coverage and Exclusions**

a. This Instruction is intended to cover all matters of employee concern or dissatisfaction that are subject to the control of management and for which the employee seeks

personal relief. This includes matters that the employee alleges have resulted in coercion, reprisal, or retaliation, and for which there is no other established procedure for appeal or complaint.

b. This Instruction does not cover the matters set forth in Appendix A.

**1.10. Right of Access to Counselors.** In presenting a grievance, an employee has the right to communicate with the Human Capital Advisory Services or a counselor of the OIG.

**1.11. Right to Present a Grievance, Representation, Official Time, and Resources**

a. In presenting a grievance, an employee shall:

(1) Be assured freedom from restraint, interference, coercion, discrimination, or reprisal.

(2) Have the right to be accompanied, represented, and advised by an attorney or other representative of his or her choice at any stage of the proceeding. (Exception - *see* subparagraph (c), below.) Attorneys may not claim representation fees from the agency. The designation of a representative or any change must be in writing, signed and dated by the employee, and provided to the deciding official on the grievance. A copy shall be provided simultaneously to the Assistant Director for Human Capital Advisory Services (Workforce Relations).

(3) Be assured a reasonable amount of official time for presenting the grievance if he or she is otherwise in an active duty status. Presentation of a grievance means meeting either with the Informal or Formal Deciding Official, or grievance examiner. Official time for preparation of a grievance is not allowed.

b. When an employee designates another OIG employee as his or her representative, the representative shall have the same entitlements provided for in subparagraphs a. (1) and (3), above.

c. The grievant's choice of a representative may be disallowed on the basis of:

(1) Priority needs of the OIG mission.

(2) Unreasonable costs to the OIG.

(3) Conflict or apparent conflict of interest or of position.

d. The Deciding Official, after consultation with the Assistant Director for Human Capital Advisory Services (Workforce Relations), may disallow an employee's choice of representative at any time. The employee will be told in writing the specific reasons for the disallowance. The disallowance may be challenged in writing to the Director for Human Capital Advisory Services. The challenge must set forth the specific reason(s) why the designated

representative should be approved and must be submitted within five calendar days of receipt of the disallowance. A final decision will be made within 10 calendar days after receipt of the request. The grievance processing shall be held in abeyance pending the decision on the challenge. The decision shall be final and not subject to further administrative review.

e. Clerical and/or secretarial support will not be made available to the grievant or to the grievant's representative during the course of preparation or presentation of the grievance. Government facilities such as computers, telephones, and typewriters will not be made available to the employee.

**1.12. Cancellation or Termination of Grievance.** A grievance shall be canceled:

- a. At the employee's written request;
- b. When the grievant's employment terminates, unless the relief sought can be granted after termination of his or her employment;
- c. For failure to prosecute the grievance; or
- d. Upon the employee's death, unless the grievance involves pay.

**1.13. Allegations of Discrimination.** If an allegation of discrimination related to the grievance is raised at any stage in the grievance procedure, processing of the grievance under this Instruction shall be suspended until such time as the employee:

- a. Obtains, from the Equal Employment Opportunity (EEO) Office, information on the EEO process, and
- b. Completes an election between the two routes. If the employee elects to proceed under the grievance procedure, any allegation of discrimination will not be considered.

**1.14. Processing Time Frames and Requests for Time Extensions.** The following time frames should be adhered to in processing grievances unless unforeseen circumstances interfere. Requests for extensions of time by any party appropriately connected with the grievance are to be submitted in writing to the appropriate deciding official. Copies of the requests and their disposition shall be made available to all parties appropriately connected with the grievance and shall become part of the official grievance file.

<b><u>Person Responsible for Meeting Time Limit:</u></b>	<b><u>Time Limit</u></b> <b>(Calendar Days)</b>
<b><u>Grievant:</u></b> Files informal grievance, normally with immediate supervisor (see Chapter 2) .....	15
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<b><u>Grievance Examiner:</u></b> Prepares report of findings and recommendations and submits, with the grievance file, to the Formal Deciding Official for decision	DETERMINED BY GRIEVANCE EXAMINER
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## CHAPTER 2 INFORMAL PROCEDURE

### 2.1. Presentation of Grievance

a. In most cases the grievance shall be presented informally by the employee and/or his or her representative to the immediate supervisor, who is designated as the Informal Deciding Official. The grievance shall be presented in writing with a copy to the Assistant Director for Human Capital Advisory Services (Workforce Relations) at the same time.

b. An employee grieving a merit staffing action shall present the written grievance informally to the Director for Human Capital Advisory Services.

c. Grievances filed as a result of a disciplinary action shall be presented as follows:

(1) When an employee has had an opportunity to reply to an official reprimand, the employee will be entitled only to the formal grievance procedure. The grievance will be filed with the management official one administrative level higher than the individual who issued the official reprimand. (If the employee was not given the opportunity to reply to the official reprimand, he or she shall be entitled to both the informal and formal procedures.)

(2) An employee who has received a decision to suspend for 14 days or less shall bypass the informal grievance procedure and submit the grievance at the formal step. The grievance will be filed with the management official one administrative level higher than the individual who made the final decision on the disciplinary action.

(3) An employee in the excepted service who has received a decision to suspend for more than 14 days, a decision of reduction in grade and/or pay for cause, or a decision of removal from the Federal service for cause may grieve such decision at the formal step of the grievance procedure provided that such employee is not, at the time the decision is issued, serving the first year of a trial period resulting from an initial appointment or does not otherwise have the right to appeal such decision to the Merit Systems Protection Board.

d. An employee who files a grievance based upon a performance rating shall file informally with the person who served as the approving official in the evaluation process.

**2.2. Time Limit for Presenting the Grievance.** An employee must present a grievance within 15 days of the date of the act or occurrence being grieved or the date he or she first became aware of that act or occurrence. An employee may present a grievance concerning a continuing practice or condition at any time but no later than 15 days after the last incident.

### 2.3. Rejection of the Informal Grievance

a. The Informal Deciding Official may reject the informal grievance for good cause, including, but not limited to, the following reasons:

- (1) The employee is excluded from coverage under paragraph 1.9 of this Instruction;
- (2) The subject is excluded from coverage under Appendix A;
- (3) The grievance is untimely; or
- (4) The remedy requested is not personal to the employee or not subject to the control of the IG.

b. The Informal Deciding Official shall consult with the Assistant Director for Human Capital Advisory Services (Workforce Relations) before rejecting the grievance.

c. The grievance shall be rejected in writing. This written notice to the employee will, in effect, establish a grievance file which will be in the custody of the Workforce Relations Division (WRD).

**2.4. Action by the Informal Deciding Official.** The Informal Deciding Official shall make every effort to resolve the grievance informally with the employee. In doing so, the Informal Deciding Official shall:

- a. Consider all the facts of the grievance fully and impartially.
- b. Consider the employee's viewpoint, the viewpoints of others concerned, and the interests of the OIG. Consideration may include, as necessary, communication with any or all persons concerned, as well as with any other appropriate officials. In grievances based on a performance rating, the Deciding Official shall consult with the rating officials (i.e., the rating supervisors and reviewer(s)).
- c. Resolve the grievance, or if unable to do so, furnish the employee and the WRD a Report of Disposition as described below.
- d. The Informal Deciding Official's Report of Disposition shall be in writing and contain the following:
- (1) The nature of the grievance;
  - (2) The consideration accorded it;
  - (3) The results of efforts to resolve the grievance;
  - (4) The dates of the period during which the grievance was under consideration;
  - (5) The timeframe for proceeding to the formal stage; and

(6) The name and location of the Formal Deciding Official to whom the grievance should be presented.

e. If the Informal Deciding Official fails to request and receive approval of a time extension and does not issue a decision within the 10 days as prescribed, the grievant may proceed to the formal step on the eleventh day.

## CHAPTER 3 FORMAL PROCEDURE

### **3.1. Presentation of Formal Grievance**

a. An employee is entitled to present a formal grievance if he or she has completed action under the informal procedure or is excepted from filing an informal grievance in accordance with Chapter 2 (refer to paragraph 2.1).

b. The official to whom a formal grievance is presented is the Formal Deciding Official. The Formal Deciding Official must be at the next higher administrative level than the official who served as the Informal Deciding Official, unless the Inspector General was the informal deciding official (See Appendix B2) and can be no lower than an office director. The Formal Deciding Official must also be at a higher level than any employee involved in any phase of the grievance or the matter being grieved. Normally, the Formal Deciding Official is in the direct chain of command above the Informal Deciding Official.

c. All formal grievances concerning merit staffing actions shall be submitted to the Assistant Inspector General for Administration and Management.

**3.2. Time Limit for Presenting a Formal Grievance.** The employee must present a formal grievance within five days after completing the informal procedure (five days after receipt of decision) or, when excepted from the informal procedure, within the time frames set forth in Chapter 2, paragraph 2.2.

### **3.3. Content of Formal Grievance**

a. A formal grievance must:

(1) Be presented in writing to the Formal Deciding Official with a copy to the Assistant Director for Human Capital Advisory Services (Workforce Relations) at the same time:

(2) Contain the employee's name, grade, title, and duty station;

(3) Contain the name and address of the employee's representative, if any;

(4) Contain sufficient detail to identify the basis for the grievance; and

(5) Specify the personal relief requested by the employee. The grievant may not introduce new issues or propose new remedies not raised at the informal stage. This does not prohibit settlement of the grievance by a remedy other than that submitted in the original grievance.

**3.4. Rejection of the Formal Grievance.** After consultation with the WRD, the Formal Deciding Official may reject the formal grievance for good cause, including but not limited to, the following reasons:

- a. The employee is excluded from coverage under Chapter 1, paragraph 1.9;
- b. The subject of the grievance is excluded under Appendix A;
- c. The grievance is untimely;
- d. The remedy requested is not personal to the employee or not subject to the control of the Inspector General; or
- e. Issues or proposed remedies differ from those the employee raised at the informal stage.

**3.5. Action by the Formal Deciding Official**

a. The Formal Deciding Official shall proceed as follows upon receiving the formal grievance:

- (1) Obtain the Report of Disposition on the informal grievance from the WRD;
- (2) Establish an independent grievance file that becomes the official record of the grievance. As a minimum, the file must contain all pertinent records including witness statements, reports of interviews and/or meetings, the record of hearing, if any, the fact finding report, and the decision on the informal grievance;
- (3) Review the formal grievance to establish that it contains the information required in paragraph 3.3, above;
- (4) At the election of the Formal Deciding Official, or at the request of the grievant or his or her representative, meet with the grievant and his or her representative regarding the grievance (except in matters-covered by paragraphs b and c, below). Such meeting may be accomplished in person, by a telephone conference call, or through a designated management official, as determined by the Formal Deciding Official;
- (5) Consider all the facts of the grievance fully and impartially;
- (6) Issue the final decision on the grievance (except in matters covered by paragraphs b and c, below). The determination not to use a Grievance Examiner is not grievable, and the decision on the grievance is not subject to further administrative review.

b. If it is determined that the matter grieved is of unusual scope or complexity, the Formal Deciding Official shall consult with the Assistant Director for Human Capital Advisory

Services (Workforce Relations), and if appropriate, request the appointment of a Grievance Examiner. The Grievance Examiner may be external to, or selected from within, the OIG.

c. In cases involving grievances filed as a result of disciplinary actions as defined in Chapter 2, paragraph 2.1.c.2 and 3 of this Instruction, the Formal Deciding official shall notify the WRD to request the appointment of an external Grievance Examiner.

**3.6. Appointment of Grievance Examiner**

a. The appointment of an Examiner is made by the WRD upon receiving notification from the Formal Deciding Official.

b. The appointment of an Examiner in grievances filed as a result of disciplinary actions as defined in Chapter 2, paragraphs 2.1.c.2 and 2.1.c.3 of this Instruction is required.

c. The Examiner must be someone who is impartial and objective and must be an individual who has not been involved in the matter being grieved. He or she must not occupy a position subordinate to any official who recommended, advised, or otherwise participated in, or made a decision regarding the matter being grieved.

d. The WRD will notify the Formal Deciding official and grievant in writing of the appointment of an Examiner and will transmit the grievance file to the Examiner.

**3.7. Responsibilities of the Grievance Examiner**

a. The Examiner shall conduct an inquiry of a nature and scope appropriate to the issue(s) involved in the grievance. At his or her discretion, the inquiry may consist of:

- (1) Securing documentary evidence;
- (2) Personal interviews;
- (3) A hearing; or
- (4) Any combination of (1) through (3), above.

b. A management representative will be designated to advise and represent management when a hearing is held.

**3.8. Costs of Grievance Examiner and Hearing.** The WRD shall coordinate arrangements with respect to payment of expenses, if any, related to the following:

a. The Examiner's services, e.g., fee or reimbursable detail, travel, per diem, tape of hearing, hearing room, typing services.

b. These costs will be borne by the OIG.

**3.9. Conduct of Hearing**

a. If a hearing is held, the Examiner shall conduct it as follows:

(1) Attendance at a hearing is limited to persons determined by the Examiner to have a direct connection with the grievance.

(2) Judicial rules of evidence are not applied strictly, but the Examiner shall exclude irrelevant or unduly repetitious testimony.

(3) Decisions on the admissibility of evidence or testimony are made by the Examiner.

(4) Testimony is given under oath or affirmation.

(5) Both parties may produce witnesses.

(6) Both parties may cross-examine witnesses.

(7) Employees shall be made available as witnesses when requested by the Examiner after consideration of the request by the Assistant Director for Human Capital Advisory Services (Workforce Relations). If it is determined that it is not practicable administratively to comply with the Examiner's request, the Examiner shall be notified in writing of the reasons for that determination.

(8) Employees are in a duty status during the time they are made available as witnesses.

(9) The Examiner may exclude any person from the hearing for inappropriate or disruptive behavior.

(10) Witnesses shall be assured freedom from restraint, interference, coercion, discrimination, or reprisal in presenting their testimony.

b. Record of Hearing.

(1) The Examiner shall have an audiotape of the hearing prepared. The grievant may request a copy of the taped hearing.

(2) The record of the hearing shall include all pertinent documents submitted and accepted.

(3) The parties are entitled to submit written exceptions to any part of the tape of hearing. Any written exception and the tape of the hearing are made a part of the official grievance file.

**3.10. Review and Comment**

a. The Examiner shall establish a grievance file and ensure that the grievance file contains all documents related to the grievance. The documents include records or copies of witnesses' statements and the tape of the hearing if a hearing was held.

b. The Examiner shall make a copy of the grievance file available to the grievant, the grievant's representative, and the management representative, for five days after completion of the inquiry for review and comment. Their comments shall be included in the file.

**3.11. Findings and Recommendation of the Examiner**

a. After all parties have been given an opportunity to review the grievance file, the Examiner shall prepare a report of findings and recommendations. The Examiner's report, with the grievance file, shall be submitted to the Formal Deciding Official.

b. The Examiner shall furnish a copy of his or her report to the grievant or the grievant's representative, if any, and to the Assistant Director for Human Capital Advisory Services (Workforce Relations).

**3.12. Final Decision**

a. Within 15 days after receipt of the Examiner's report of findings and recommendation and the grievance file, the Formal Deciding Official shall issue the decision on the grievance.

b. If the Formal Deciding official determines that the Examiner's recommendations are unacceptable and should be rejected, he or she must consult with the Assistant Director for Human Capital Advisory Services (Workforce Relations). The reason(s) for rejecting the recommendation(s) of the Examiner shall be set forth in the decision.

c. The decision shall be in writing, will be the final consideration of the grievance, and shall not be subject to further administrative review.

**3.13. Distribution of the Final Decision.** The Formal Deciding Official shall transmit copies of the formal decision to:

a. The grievant and grievant's representative, if any;

b. The management representative, if any;

c. The Examiner, if any;

d. The Assistant Director for Human Capital Advisory Services (Workforce Relations);

and

e. The Informal Deciding Official.

**3.14. Custody of the Grievance File.** Upon completion of the grievance process, the grievance file shall be forwarded to, and remain in the custody of, the WRD. The grievance file does not become a part of the employee's official personnel folder (OPF).

**APPENDIX A  
EMPLOYMENT MATTERS EXCLUDED**

1. The content of published regulations and policy.
2. A decision appealable to the Merit Systems Protection Board (MSPB) or subject to final administrative review by the Office of Personnel Management (OPM) or the Equal Employment Opportunity Commission (EEOC).
3. Position classification decisions and resulting actions covered by the position classification appeals procedure.
4. Nonselection for promotion from a group of properly ranked and certified candidates or failure to receive a noncompetitive promotion.
5. A preliminary warning notice of an action that, if effected, would be covered under the grievance system or excluded from coverage by paragraph 2, above.
6. The return of a Senior Executive Service career appointee to another pay system during the one year probationary period for less than fully successful executive performance.
7. A reassignment of a Senior Executive Service appointee following the appointee's receipt of an unsatisfactory performance rating.
8. An action that terminates a temporary promotion within a maximum period of two years and:
  - a. Returns the employee to the position from which he or she was promoted temporarily, or
  - b. 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 promoted temporarily.
9. An action that 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.
10. The substance of critical and noncritical elements and performance standards of an employee's position that have been established in accordance with the requirements of the requisite performance appraisal plan.

**APPENDIX A (con't)**  
**EMPLOYMENT MATTERS EXCLUDED**

11. The granting of or failure to grant or the amount of a Performance Award; the granting of or failure to grant or the amount of a Superior Accomplishment Award; the adoption of or failure to adopt an employee suggestion or invention; the granting of or failure to grant an award of the rank of Meritorious or Distinguished Senior Executive; the receipt of or failure to receive a Quality Step Increase; a decision on the granting of or failure to grant honorary recognition.
12. A decision to grant or not to grant a general increase or merit increase.
13. Any termination of an employee serving a probationary period or the first year of a trial period for unsatisfactory performance or misconduct.
14. A performance evaluation of a Senior Executive Service member.
15. An action taken in accordance with the terms of a formal agreement voluntarily entered into by an employee that either assigns the employee from one geographical location to another or returns an employee from an overseas assignment.
16. A return of an employee from an initial appointment as a supervisor or manager to a nonsupervisory or nonmanagerial position for failure to complete satisfactorily the probationary period.
17. An action taken for security reasons under Executive Order 10450.
18. Any matter that has its own review or appeal procedure stated as part of its regulatory provisions.

**APPENDIX B  
DEFINITIONS**

1. Days. Calendar days.
2. Deciding Official. An official at a higher administrative level than any official who took an action or made a decision that is an issue in the grievance, except the Inspector General can be the deciding official even if involved.
3. Employees. Current and former OIG employees who meet the time limits for presenting a grievance and for whom a remedy can be granted.
4. Grievance. A request by an employee or by a group of employees acting as individuals, for personal relief in a matter of concern or dissatisfaction related to their employment over which the Inspector General has control, including any matter on which an employee alleges that coercion, reprisal, or retaliation has been practiced against the employee. The range of matters is limited to those for which no other means of administrative review is provided by law, executive order, OPM regulation, or Inspector General regulation.
5. Grievance Examiner (hereafter also referred to as the Examiner). An impartial third party assigned to conduct an investigation or hearing--or both--concerning a grievance and to develop findings and recommendations. The grievance examiner, if an OIG employee shall not occupy a position subordinate to any official who recommended, advised, made a decision on, or otherwise was involved in the matter being grieved.
6. Grievance File. A file containing all documents related to the grievance including, but not limited to, statements of witnesses, the report of hearing when one is held, statements made by the parties to the grievance, and the decision.
7. Personal Relief. A specific remedy within the control of management directly benefiting the grievant. Personal relief may not include a request for disciplinary or other action affecting another employee.