

MS 655 Employee Grievances Procedures

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MS 655 Employee Grievances

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1.0 First Level

An employee may initiate a grievance within ten (10) calendar days of the incident or matter complained of, or within ten (10) calendar days after he or she becomes aware of the incident or matter. An employee may present a grievance concerning a continuing condition or practice at any time. An employee initiates a grievance by presenting it orally or in writing. Overseas employees must initiate a grievance with the Country Director. Other employees must initiate a grievance with their immediate supervisor. The official contacted shall give the employee an answer in writing within five (5) calendar days of receipt of the grievance.^[i]

2.0 Second Level

If the matter is not resolved at the first level to the employee's satisfaction, the employee may resubmit the grievance in writing to the appropriate Office Director (Associate Directors, Directors of Staff Offices, and the General Counsel) via the official at the first level within five (5) calendar days of receipt of an answer at the first level. The Office Director shall respond in writing to the grievance within fifteen (15) calendar days of receipt. An Office Director may, by written published order, delegate authority to immediate supervisors to act on grievances arising from employees under the subordinate's jurisdiction so that grievances can be resolved at the lowest level.

EXCEPTION: WHERE THE OFFICE DIRECTOR IS THE GRIEVANT'S SUPERVISOR, THERE WILL BE NO SECOND LEVEL; THE GRIEVANCE WILL GO FROM THE FIRST LEVEL TO THE THIRD LEVEL.

3.0 Third Level

If the grievant is dissatisfied with the second level response, he or she is entitled to present the grievance as a formal grievance in writing, within five (5) calendar days of receipt of the second level response, to the Deputy Director, Peace Corps (the deciding official) via the Director of Human Resource Management. The formal grievance will be considered by the Deputy Director, providing:

- (a) The employee has completed action under the informal procedure;

- (b) The employee presents the grievance so that it is received by the Deputy Director within five (5) calendar days after receipt of the second level response (overseas employees must present their formal grievance via the Country Director within five (5) calendar days of receipt of the second level response); and
- (c) The grievance contains sufficient detail to identify and clarify the basis for the grievance, specifies the personal relief requested by the employee, and is signed by the employee, or a person designated in writing by the employee to be his or her representative for the purpose of the grievance.

If the internal process has not been adhered to, the Deputy Director may return the grievance to the grievant for completion of the first or second level, as necessary. Further, the Deputy Director may request additional information to identify or clarify the grievance or the relief requested.

3.1 Rejection of Grievance

The Deputy Director may reject the grievance if:

- (a) It was not filed within the time limits specified for filing under the informal and formal procedures as set forth in paragraph 1.0 and 3.0 above;
- (b) The grievance consists wholly of a matter, or matters, excluded from coverage of the grievance system (see MS 655 paragraph 5); or
- (c) The relief requested by the employee is not personal to him or her. (A request for disciplinary action against a Peace Corps official or another employee would not be a request for personal relief).

The notice of rejection must be in writing and give the reasons for the rejection.

3.2 Adjustment or Referral of Grievance to Examiner

If the Deputy Director cannot resolve the grievance in a manner acceptable to the employee within ten (10) calendar days of receipt, he or she will appoint an examiner and refer the grievance to the examiner to conduct an inquiry.

3.2.1 Inquiry

The inquiry shall commence within seven (7) calendar days of referral. The examiner shall issue a report as soon as possible but within thirty (30) calendar days of referral.

The examiner shall conduct an inquiry of a nature and scope appropriate to the issues involved in the grievance. At the examiner's discretion, the inquiry may consist of:

- (a) The securing of documentary evidence;
- (b) Personal interviews;
- (c) A group meeting;
- (d) A hearing; or
- (e) Any combination of the above.

EXCEPTION: THE EXAMINER'S INQUIRY ON GRIEVANCES FROM OVERSEAS EMPLOYEES SHALL NOT INCLUDE A HEARING UNLESS IN THE EXAMINER'S DISCRETION A TELEPHONIC OR OTHER ELECTRONIC MEANS OF CONDUCTING A HEARING IS AVAILABLE AND NECESSARY.

3.2.2 Conduct of Hearing

If a hearing is held, the conduct of the hearing and production of witnesses shall conform with the following requirements:

- (a) The hearing is not open to the public or the press and attendance at a hearing is limited to persons determined by the examiner to have a direct connection with the grievance.
- (b) The hearing is conducted so as to bring out pertinent facts, including the production of pertinent records.
- (c) Rules of evidence are not strictly applied, but the examiner shall exclude unduly repetitious testimony or evidence.
- (d) Decisions on the admissibility of evidence or testimony are made by the examiner.
- (e) Testimony is under oath or affirmation, administered by the examiner (see 28 U.S.C. 1746).
- (f) The examiner shall give the parties an opportunity to present oral and written testimony that is relevant and material and to cross-examine witnesses who appear to testify.
- (g) The examiner may exclude any person from the hearing for resisting the authority of the examiner or misbehavior that obstructs the hearing.
- (h) Travel and per diem expenses for the grievant's attendance at the hearing will be borne by his or her office. The grievant will be responsible for any travel and per diem expenses for his or her representative.

3.2.3 Witnesses

Both parties are entitled to produce witnesses. Employees of Peace Corps shall serve as witnesses before an examiner when requested by the examiner after consideration of a request by an employee or the Peace Corps representative. The examiner may also request witnesses on his or her own behalf, except in inquiries concerning matters subject to MS 652 Disciplinary Procedure for Foreign Service Employees (because in such disciplinary matters the burden of proof is with management, that is, it is management's obligation to establish by preponderant evidence that the action was warranted).

If the requested witness's office director determines it is not administratively practicable to comply with the requests of the examiner, that official shall notify the examiner in writing of the reasons for that determination. With the agreement of both parties and the examiner, the testimony of the unavailable witness may be secured by deposition or written interrogatory. If, in the examiner's judgment, the presence of the witness is essential to a full and fair hearing, he or she may postpone the hearing until such time as the Peace Corps complies with the request. In cases of continuing refusal by management officials to make witnesses available, the examiner may, at his or her discretion, refer the issue of witnesses to the Deputy Director for resolution. If, in his or her discretion, the Deputy Director determines that the production of witnesses as requested by the grievant is administratively impractical, he or she may direct that the testimony of the requested witness be obtained by deposition or affidavit or both.

Employees of Peace Corps are in a duty status during the time they are made available as witnesses.

3.2.3.1 Freedom to Testify

Employees who serve as witnesses are assured freedom from restraint, interference, coercion, discrimination, or reprisal for presenting their testimony.

3.2.3.2 Travel Costs

Travel and per diem expenses for witnesses who are employees of Peace Corps shall be borne by the office in which they are employed.

3.2.4 Record of Hearing

The examiner at his or her discretion shall determine how a hearing shall be recorded and shall have a verbatim transcript or written summary of each hearing prepared, including all pertinent documents submitted to and accepted by him or her. When the hearing is recorded verbatim, the examiner shall make the transcript a part of the record of the proceedings. When the hearing is not recorded verbatim, a suitable summary of pertinent portions of the testimony shall be made. When agreed to in writing by the Peace Corps and the grievant (the parties), the summary constitutes the record of the hearing and is made a part of the record of the grievance proceedings. If the examiner and the parties fail to agree on the hearing summary, the parties are entitled to submit written exceptions to any part of the summary, and these written exceptions and the summary constitute the record of the hearing and are made a part of the proceedings.

4.0 Grievance File

The examiner shall establish a grievance file containing all documents related to the grievance, including statements of witnesses, records, or copies thereof, and the record of the hearing when a hearing is held.

4.0.1 Review by Employee

On completion of his or her inquiry, the examiner shall make the grievance file available to the employee and the representative for review and comment their comments, if any, shall be included in the file.

5.0 Examiner's Report

The examiner shall provide a brief written report of his or her inquiry based on the evidence in the grievance file. The report includes the examiner's recommendations concerning the resolution of the grievance and indicates the evidentiary and legal bases for the recommendations.

6.0 Decision by Deputy Director

The Deputy Director will consider the examiner's report and the grievance file and issue a written decision to the employee. If the Deputy Director does not accept the examiner's recommendations, the decision shall set forth the basis for that determination. The Deputy Director, as the deciding official, acts with the full authority of the Director of the Peace Corps and his or her decision is final. The Deputy Director shall issue a decision on the grievance within ten (10) calendar days after receipt of the examiner's report.

7.0 Disposition of the Grievance File

The grievance file, including any hearing record, the report of the examiner, and a copy of the decision letter, shall be forwarded to the Director of Human Resource Management who will serve as the Peace Corps' official custodian of all such files.

[i] Circumstances in individual cases may preclude meeting one or more of the time limits set forth in these grievance procedures; however, the parties and any Peace Corps employees involved in this process should strive to complete processing within the time limits. Either party may request an extension of the time limits for good cause.