

**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 supervisory staff are made aware of the provisions of this chapter.
- (3) The Appointing Authority shall notify an employee of the appeal process and relevant time limits.

**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-.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) 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 less than three (3) 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 able to appeal a suspension of less than three (3) days 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; 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.

**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) 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, and issue a written decision not later than fifteen (15) days after the date the Appointing Authority receives the complaint.
  - (c) The Appointing Authority shall have full authority to overturn, reduce, or amend the disciplinary action based on information gathered at the Step I hearing, including reinstatement of leave and awards of back pay, if appropriate.

(Rule 1120-11-.04, continued)

- (d) If the Appointing Authority does not issue a decision within fifteen (15) 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. 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) 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.
- (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) days after the date the complaint was filed with the Commissioner. The Commissioner 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.
- (d) If the Commissioner does not issue a decision within thirty (30) 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) 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) 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

(Rule 1120-11-.04, continued)

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.
  - (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. 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.

(Rule 1120-11-.04, continued)

- (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) 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.

**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  
Nashville, TN 37243

- (4) In no event shall a claim be paid which is not received by the Board of Appeals within thirty (30) 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.

**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.