



Washington Headquarters Services

ADMINISTRATIVE INSTRUCTION

NUMBER 37
October 27, 2006

HRD

SUBJECT: Employee Grievances

- References:
- (a) Administrative Instruction Number 37, subject as above, February 24, 1989 (hereby canceled)
 - (b) Title 5, Code of Federal Regulations, Parts 8 and 771
 - (c) Subchapter 771 of DoD 1400.25-M, "Department of Defense Civilian Personnel Manual," December 1996
 - (d) Sections 2105, 3592, 4314, and 7121 of title 5, United States Code
 - (e) through (o), see Enclosure 1

1. REISSUANCE AND PURPOSE

This Administrative Instruction:

- 1.1. Reissues Reference (a) to update established policy and guidance for an Administrative Grievance System (AGS) under the authority of Reference (b).
- 1.2. Issues grievance procedures and guidance for civilian employees as required by Part 771 of Reference (b) and subchapter 771 of Reference (c).

2. APPLICABILITY AND SCOPE

This Administrative Instruction:

- 2.1. Applies to Appropriated fund nonbargaining unit civilian employees, as defined by section 2105 of Reference (d), within the organizational entities of the Office of the Secretary of Defense (OSD), the Office of Chairman of the Joint Chiefs of Staff and the Joint Staff, the Defense Agencies, and the DoD Field Activities serviced by Washington Headquarters Services (WHS), Human Resources Directorate (HRD), Labor and Management Employee Relation Division (hereafter referred to as the "WHS-serviced activities").

2.2. Covers bargaining unit employees in WHS-serviced activities when a matter covered by the AGS cannot be grieved under a negotiated grievance procedure (NGP), either because the NGP is not in effect at the relevant time, or because it does not cover the matter being grieved.

2.3. Applies to former employees with respect to matters arising during their previous employment in a WHS-serviced activity, provided that a remedy is available consistent with applicable law and regulation.

2.4. Covers a request by an employee or a group of employees for personal relief in such matters as working conditions, improper rating and ranking of a candidate for merit promotion, lack of opportunity for overtime, a change in assignment, an admonishment, a reprimand, a suspension for 14 days or less, failure of a supervisor to establish critical elements and performance standards, and a performance appraisal rating of less-than-fully-successful for GS/GM and wage system employees.

2.5. Does not apply to:

2.5.1. A non-citizen appointed pursuant to Part 8 of Reference (b).

2.5.2. An alien appointed pursuant to section 1471(5) of 22, United States Code (U.S.C.) (Reference (e)).

2.5.3. An employee paid from funds, as defined in section 2105(c) of Reference (d).

2.5.4. An applicant for employment.

2.5.5. A decision that is appealable to the Merit Systems Protection Board (MSPB) subject to final administrative review by the Office of Personnel Management (OPM), the Equal Employment Opportunity Commission (EEOC), Federal Labor Relations Authority, or any matter that the employee files under another review or reconsideration procedure, or dispute resolution process within the Department of Defense.

2.5.6. Discrimination complaints of alleged bias or unfairness as a result of an employee's race, color, religion, sex, age, national origin, or physical or mental handicap covered by Administrative Instruction No. 9 (Reference (f)).

2.5.7. Adverse actions (such as reductions in grade or pay, suspensions for more than 14 days, furloughs of 30 days or less, removal or reduction in grade, or the withholding of within grade salary increases). Such actions are appealable to the MSPB.

2.5.8. Reduction-in-force actions are covered by Administrative Instruction No. 71 (Reference (g)).

2.5.9. Position classification decisions and any resulting actions covered by the Position Classification Appeals procedure pursuant to Subchapter 511 of DoD 1400.25-M (Reference (h)).

2.5.10. Actions directed by the OPM, MSPB, or EEOC.

2.5.11. Actions taken for security reasons pursuant to E.O. 10450 (Reference (i)).

2.5.12. The content of published OSD Principal Staff regulations and policy, except as they are applied to an employee which, through misinterpretation or misapplication of any law, rule, or regulation, affects the conditions of employment.

2.5.13. Non-selection for promotion from a group of properly ranked and certified candidates or failure to receive a noncompetitive promotion. This includes the decision not to promote or move an employee between paybands non-competitively, such as an employee in a career ladder-type position or the selection or non-selection of an employee with re-promotion priority.

2.5.14. A grievance covered by procedures established under a collective bargaining agreement pursuant to section 7121 of Reference (d).

2.5.15. A preliminary warning or notice of an action which, if effected, would be covered under the grievance system (notices of proposed adverse actions, such as reprimands, suspensions of 14 days or less, and oral warnings).

2.5.16. A return of a Senior Executive Service (SES) career appointee to the General Schedule or another pay system during the 1-year period of probation, or for less than fully successful executive performance pursuant to section 3592 of Reference (d).

2.5.17. A reassignment of an SES appointee following the appointee's receipt of an unsatisfactory rating pursuant to section 4314 of Reference (d).

2.5.18. An action that terminates a temporary promotion within a maximum period of 2 years and returns the employee to the position from which the employee was temporarily promoted; or an action that reassigns or demotes the employee to a different position that is not at a lower grade/payband or pay than the position from which the employee was temporarily promoted, unless the termination is based on misconduct or unacceptable performance.

2.5.19. 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 2 years, but not more than 5 years, and returns the employee to the position from which promoted or to a different position at an equivalent grade/payband and pay, provided that the return is not based on misconduct or unacceptable performance.

2.5.20. The substance of critical elements or performance expectations or their equivalent and performance standards established by a supervisor for an employee's position. The supervisor's failure to identify performance expectations/critical elements or their equivalent and to establish performance standards for an employee, or an employee's performance rating that is less than fully successful, are grievable pursuant to this Instruction.

2.5.21. The granting of or failure to grant or recommend an employee performance award, or the adoption or failure to adopt an employee suggestion or invention, or the granting of or failure to grant or recommend an award of the rank of meritorious or distinguished executive in the SES.

2.5.22. The receipt of or failure to receive a performance award (SES bonus) or a quality salary increase.

2.5.23. A decision to grant or not to grant a general increase, a quality step increase or a performance award, an incentive award, honorary recognition, recruitment or relocation bonuses, retention allowances, or dual compensation waivers.

2.5.24. The termination of a probationer for unsatisfactory performance or misconduct.

2.5.25. The termination of an SES career appointee during probation for unacceptable performance.

2.5.26. A performance evaluation and rating for a member of the SES.

2.5.27. An action taken in accordance with the terms of a formal agreement voluntarily entered into by an employee that assigns the employee from one geographical location to another or returns an employee from an overseas assignment.

2.5.28. The return of an employee from an initial appointment as a supervisor or manager to a non-supervisory or non-managerial position for failure to complete satisfactorily the probationary period.

2.5.29. An action that terminates temporary employment or the separation of a noncareer executive or Schedule C employee.

2.5.30. A separation action not otherwise excluded above and not appealable to the MSPB or subject to final administrative review by OPM or EEOC under law or the regulations of OPM or EEOC.

2.5.31. SES or Senior Level pay changes.

2.5.32. Defense Civilian Intelligence Personnel System (DCIPS) Employees. Non-preference eligible DCIPS employees may grieve their removal, suspension, reduction in grade or pay, or furlough for 30 days or less. They must have completed 1 year of current continuous service in the same or similar position in the Department of Defense under other than a temporary appointment of 2 years or less except for terminations for national security reasons pursuant to section 1609 of 10 U.S.C. (Reference (j)).

2.5.33. Employees under National Security Personnel System. For employees subject to Reference (k), the rating of record issued under the provisions of the National Security Personnel System, and all issues excluded from reconsideration in accordance with Reference (k), under section SC 1940.12.4.2. (e.g., an interim review, closeout assessment, or a performance payout).

3. DEFINITIONS

Terms used in this Instruction are defined in Enclosure 2.

4. POLICY

It is OSD policy that:

4.1. In accordance with Reference (c), employees shall be treated equitably. Those who believe that they have not been so treated have a right to present their grievances to appropriate management officials for prompt consideration and equitable decision.

4.2. Employees and their representatives, if any, shall be unimpeded and free from restraint, interference, coercion, discrimination, or reprisal in presenting a grievance.

4.3. A WHS-serviced activity employee, not regulated by any other procedure, may grieve his or her receiving a less than fully successful performance rating. However, if that employee files an appeal concerning any personnel action resulting from that rating, such as to MSPB or EEOC, that rating no longer comes under the coverage of the administrative grievance procedure. No further action or processing of the employee's grievance concerning his or her receiving a less than fully successful rating will be taken after the date the employee files an appeal with an Agency such as MSPB or EEOC.

4.4. Impartial and prompt consideration shall be given to all grievances. Employee grievances shall be resolved informally at the lowest possible supervisory level and as early as possible after being made known to the supervisor.

4.5. Use of the Collaborative Resolution Program (CRP) process, when appropriate, as an alternative to formal administrative procedures is highly encouraged. The WHS CRP, pursuant to Administrative Instruction No. 106 (Reference (1)), is a resource for informal, voluntary and confidential dispute resolution services. The major processes of the CRP include, but are not limited to, mediation, facilitation, and peer resolution panel.

5. RESPONSIBILITIES

5.1. The employee or a group of employees shall:

5.1.1. Present a grievance free from restraint, interference, coercion, discrimination, or reprisal under the system in this Instruction, and management must accept it and promptly consider a grievance if it is properly presented.

5.1.2. Allow a reasonable amount of official time to present the grievance if the employee would otherwise be in a duty status. If the authorized representative is an employee covered by this Instruction who would otherwise be in a duty status, the representative also shall be allowed a reasonable amount of official time for the presentation of the grievance. The employee, in presenting the grievance, is entitled to communicate with, and seek information from, the following:

5.1.2.1. The HRD, WHS, or the Joint Staff PSD.

5.1.2.2. The Assistant Director of Equal Employment Opportunity, the Equal Employment Opportunity Officer, the Federal Women's Program Manager, the Hispanic Employment Program Manager, the Black Employment Program Manager, other designated Special Emphasis Program managers, or an EEO Counselor.

5.1.2.3. The General Counsel, DoD, or a designee, who serves as Counselor to employees on matters involving conflict of interest and standards of conduct.

5.1.2.4. A supervisor or management official of a higher rank than the employee's immediate supervisor.

5.1.3. Cancel the grievance at any time.

5.2. The Director, HRD, WHS, or the Joint Staff PSD, as appropriate, shall:

5.2.1. Develop and administer a grievance system that complies with OPM and DoD regulations.

5.2.2. Provide employees an opportunity to express their views.

5.2.3. Make this Instruction available to employees, their representatives, and others.

5.2.4. Provide guidance and assistance to supervisors, deciding officials, OSD Principal Staff Assistants (PSAs), and employees, and ensure a timely and equitable resolution of grievances.

5.2.5. Determine if a grievance is properly presented and is an appropriate matter for consideration.

5.2.6. Establish the method of selecting grievance examiners, ensure that they are properly trained, and assign them to specific cases.

5.2.7. Make the initial OSD Principal Staff decision as to the employee's choice of a representative taking into consideration any conflict of interest or conflict of position or unreasonable costs to the Government.

5.2.8. Assist the employee and employee's representative, if needed, to obtain a copy of the grievance examiner's report of findings and recommendations.

5.2.9. Maintain a copy of the complete grievance file for 4 years.

5.3. Supervisors shall:

5.3.1. Make this Instruction available to employees.

5.3.2. Accept and attempt to resolve informal grievances objectively and equitably within the specified time limit.

5.3.3. Record the date when an informal grievance begins and ends.

5.3.4. Notify employees within 15, but not more than 30, calendar days of their decision on informally presented grievances and advise them of their right to file a formal grievance.

5.3.5. Use a neutral (e.g., mediator, facilitator, or conciliator) to resolve grievance, where appropriate.

5.3.6. Cancel an informal grievance when requested by the employee.

5.4. Deciding Officials shall:

5.4.1. Accept a formal grievance with the concurrence of the Director, HRD, WHS, or the Joint Staff PSD, as applicable.

5.4.2. Consider and process the formal grievance in accordance with this Instruction, attempting to resolve it in a manner acceptable to the employee, and notifying the employee, in writing, of his or her decision within the specified time limits.

5.4.3. Use a neutral party (e.g., mediator, facilitator, or conciliator) to resolve grievance, where appropriate.

5.4.4. Decide whether to join similar or identical grievances; whether to require, and how to conduct an investigation; whether to allow the grievant's requested representative; and how much official time shall be granted to the employee.

5.4.5. Cancel or terminate a formal grievance only:

5.4.5.1. At the employee's request.

5.4.5.2. When the employee's employment terminates, unless the relief sought can be granted after the termination of his or her employment.

5.4.5.3. Upon the employee's death, unless the grievance involves pay.

5.4.5.4. For failure to prosecute, if the employee does not furnish the required information and duly proceed with the advancement of the grievance.

5.5. The Grievance Examiner shall:

5.5.1. Establish an employee grievance file.

5.5.2. Eliminate from consideration all matters not covered under the grievance system.

5.5.3. Conduct an inquiry of a nature and scope appropriate to the issues involved in the grievance.

5.5.4. Upon completion of the inquiry, make all documents available to the employee and the employee's representative for review and comment.

5.5.5. Prepare and submit a report of findings and recommendations to the OSD PSAs through the Director, HRD, WHS, or the Joint Staff PSD.

6. PROCEDURES

Procedures for the grievance process are at Enclosure 3.

7. EFFECTIVE DATE

This Instruction is effective immediately, except that no provision of this Administrative Instruction shall be applied in such a way as to affect any administrative proceeding related to any action taken pursuant to provisions of Reference (a) that is pending on the effective date of this Instruction.

A handwritten signature in black ink, reading "Ralph E. Newton". The signature is written in a cursive style with a long horizontal stroke at the end.

Ralph E. Newton
Acting Director

Enclosures – 3

- E1. References, continued
- E2. Definitions
- E3. Grievance Procedures

E1. ENCLOSURE 1

REFERENCES, continued

- (e) Section 1471 of title 22, United States Code
- (f) Administrative Instruction Number 9, "Processing Complaints of Discrimination," January 11, 1979
- (g) Administrative Instruction Number 71, "Reduction in Force," July 20, 1984
- (h) Subchapter 511 of DoD 1400.25-M "Department of Defense Civilian Personnel Manual," December 1996
- (i) Executive Order 10450, "Security Requirements for Government Employment," April 27, 1953, as amended
- (j) Section 1601 and 1609 of title 10, United States Code
- (k) Subchapter 1940 of DoD 1400.25-M, "Department of Defense Civilian Personnel Manual," April 28, 2006
- (l) Administrative Instruction Number 106, "Collaborative Resolution Program (CRP)," October 31, 2005
- (m) Deputy Secretary of Defense Memorandum, "Delegation of Authority Under Administrative Grievance Procedure," March 25, 1992
- (n) Administrative Instruction Number 63, "Performance Appraisal Program for General Schedule, Federal Wage System, and Certain Other Employees," July 1, 1999
- (o) Subchapter 1920 of DoD 1400.25-M, "Department of Defense Civilian Personnel Manual," April 28, 2006

E2. ENCLOSURE 2

DEFINITIONS

E2.1. Bargaining Unit Employee. An employee included in an appropriate exclusive bargaining unit, as determined by the Federal Labor Relations Authority, for which a labor organization has been granted exclusive recognition.

E2.2. 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 and who was not involved in the attempt to resolve the grievance informally, except when the Secretary of Defense has been involved.

E2.3. Employee. Includes a non-bargaining unit employee or any former employee for whom a remedy can be provided.

E2.4. Grievance. A request by an employee or by a group of employees for personal relief in a matter of concern or dissatisfaction relating to the employment of the employee or employees, which is under the control of OSD Principal Staff management, including any matter on which an employee alleges that coercion, reprisal, or retaliation has been practiced against the employee.

E2.5. Grievance Examiner. A person assigned to conduct an investigation or hearing--or both--concerning a grievance. The grievance examiner must be a person who was not involved in the matter being grieved, and who does not occupy a position subordinate to any official who recommended, advised, made a decision on, or otherwise was involved in the matter being grieved.

E2.6. Grievance File. A file that contains all documents related to the grievance, including but not limited to any statements of witnesses, records or copies thereof, the report of a hearing when one is held, statements made by the parties to the grievance, and the decision.

E2.7. Personal Relief. A remedy that benefits the employee and that management has the authority to grant. Personal relief may not include a request for disciplinary or other action affecting another employee.

E2.8. OSD PSA. The Under Secretaries of Defense, the Director of Defense Research and Engineering, the Assistant Secretaries of Defense, the General Counsel of the Department of Defense, the Assistants to the Secretary of Defense, and the OSD Directors or equivalents who report directly to the Secretary or Deputy Secretary of Defense.

E3. ENCLOSURE 3

PROCEDURES

E3.1. PROBLEM-SOLVING PROCEDURE

E3.1.1. Presenting the Problem

E3.1.1.1. An employee may informally present a work-related problem concerning a continuing practice or condition within 15 calendar days of the date of that act or occurrence, or of the date the employee became aware of it or reasonably should have become aware of it.

E3.1.1.2. An employee may present a problem orally or in writing for informal consideration. The employee must identify and clarify the basis for the presentation and specify the relief sought, which must be directly personal to the employee. The employee must advise the official hearing the presentation of the name of the employee's representative, if any.

E3.1.1.3. The initial presentation normally is made to the immediate supervisor; however, it may be made to an official of higher rank. When the problem concerns a decision made by an official of higher rank than the immediate supervisor, the initial presentation shall be made to that official or one of still higher rank. Problems may not be initially submitted to the official who makes the final decision (deciding official).

E3.1.1.4. The problem-solving procedure must be completed before a grievance can be accepted. Exception: An employee may present a grievance if it concerns an action effected through an advance written notice, with right to reply and contest the action, and a final written decision.

E3.1.1.5. An employee who receives a performance rating of less than fully successful may grieve such rating under the procedures described in paragraph E3.4.

E3.1.2. Consideration. The supervisor who receives the problem shall discuss it with the employee and attempt to resolve it. Where appropriate, the use of a neutral party (e.g., conciliator, facilitator, or mediator) is encouraged. The supervisor shall notify the employee of the action taken within 15, but not more than 30, calendar days of the date he/she has made a decision and inform the employee that if the solution is not satisfactory, the employee may present a grievance. If the employee presents the problem orally, the supervisor's determination may be oral or written. If the problem is presented in writing, the determination must be in writing.

E3.2. FORMAL GRIEVANCE PROCEDURE

E3.2.1. Presenting the Grievance. If the employee is not satisfied with the results of the problem-solving procedure or the results for personal relief in such matters as working conditions, improper rating and ranking of a candidate for merit promotion, lack of opportunity for overtime, a change in assignment, an admonishment, a reprimand, a suspension for 14 days or less, failure of a supervisor to establish critical elements and performance standards, and a performance appraisal rating of less-than-fully-successful for GS/GM and wage system employees, the employee may present a formal grievance within 15 calendar days of the date of notification of the results of the supervisor's or other management official's effort to resolve the problem. The grievance must be in writing, signed, dated, and submitted to the deciding official through the HRD, WHS, or the Joint Staff PSD. The grievance must include:

E3.2.1.1. Name of employee and name, address, and telephone number of the employee's representative, if any.

E3.2.1.2. Employee position title and grade.

E3.2.1.3. Employee organizational entity to which assigned.

E3.2.1.4. A clear statement of the issue, including sufficient detail to identify and clarify the matter being grieved (times, dates, names, places, and other pertinent data).

E3.2.1.5. A specific statement of the relief sought that must be directly personal to the employee.

E3.2.1.6. Copies of any documentation in the employee possession relevant to the grievance.

E3.2.1.7. Be accompanied, represented, and advised by a representative chosen by the employee, when presenting a grievance. However, the OSD Principal Staff decides as to the employee's choice of a representative taking into consideration any conflict of interest or conflict of position or unreasonable costs to the Government. The representative is assured freedom from restraint, interference, coercion, discrimination, or reprisal.

E3.2.1.8. Challenge the decision with the Head of the OSD Principal Staff or a designee, if the Director, HRD, WHS, the Joint Staff Personnel Services Division (PSD), or the Deciding Official disallow the employee's choice of representative. The employee shall obtain a decision before proceeding with the grievance. The decision of the Head of the OSD Principal Staff or designee regarding the challenge shall be made not later than 10 calendar days after receipt of the employee's challenge. The decision shall be final.

E3.2.2. Processing the Formal Grievance

E3.2.2.1. Rejection of the Grievance. If the grievance is not properly presented, the Director, HRD, WHS, or the Joint Staff PSD shall:

E3.2.2.1.1. Return it to the employee for correction and resubmission within a specified time limit.

E3.2.2.1.2. Reject it as untimely.

E3.2.2.1.3. Reject it as an inappropriate matter for consideration under this Instruction.

E3.2.2.2. Acceptance of the Grievance. If the grievance is properly presented, the Director, HRD, WHS, or the Joint Staff PSD shall forward it to the deciding official.

E3.2.2.3. The deciding official shall:

E3.2.2.3.1. Attempt to resolve the formally presented grievance.

E3.2.2.3.2. Notify the employee in writing of his or her decision and any action to be taken within 60 calendar days of receipt of the grievance. The deciding official may extend time frames when warranted by special circumstances (e.g., when those involved are geographically dispersed or where a fact-finder is used in the process). However, a grievance decision from the deciding official should be rendered no more than 90 calendar days from the filing of the grievance absent mutual agreement to extend this time limit to accommodate resolution of the dispute.

E3.2.2.3.3. Include in the written decision that if the resolution of the grievance is unacceptable, the employee must notify the official within 5 calendar days, and may request the assignment of a grievance examiner.

E3.2.2.3.4. When a timely notification of non-acceptance from the employee is received with a request for assignment of a grievance examiner, forward the grievance and pertinent correspondence to the HRD, WHS, or the Joint Staff PSD.

E3.2.2.4. Assignment of the Grievance Examiner. The HRD, WHS, or the Joint Staff PSD, shall assign a properly selected and trained grievance examiner.

E3.2.2.5. Grievance Examiner's Inquiry and Report. The grievance examiner shall conduct an inquiry into the grievance; complete the grievance file; and submit the report to the OSD PSAs through the HRD, WHS, or the Joint Staff PSD, within 30 calendar days of the grievance examiner's assignment to the inquiry.

E3.2.2.5.1. Scope of Inquiry. The grievance examiner shall conduct an inquiry which, at the examiner's discretion, may consist of:

E3.2.2.5.1.1. Securing documentary evidence;

E3.2.2.5.1.2. A personal interview;

E3.2.2.5.1.3. A group meeting;

E3.2.2.5.1.4. A hearing; or

E3.2.2.5.1.5. Any combination of the above.

E3.2.2.5.2. The Hearing. If a hearing is held, it shall be conducted by a grievance examiner to bring out pertinent facts and develop pertinent records.

E3.2.2.5.2.1. Attendance. The hearing is not open to the public or the press. Attendance shall be limited to those persons determined by the examiner to have a direct connection with the grievance or the right to attend. The examiner may exclude any person from the hearing for conduct or misbehavior that obstructs the hearing.

E3.2.2.5.2.2. Hearing Procedures. Rules of evidence are not strictly applied, but the examiner shall rule out irrelevant or unduly repetitious testimony. The examiner shall make decisions on the admissibility of evidence or testimony. Testimony shall be given under oath or affirmation and the parties provided an opportunity to cross-examine witnesses who appear and testify.

E3.2.2.5.2.3. Witnesses. Both parties are entitled to produce witnesses and to introduce signed, sworn statement.

E3.2.2.5.2.3.1. Employees to whom this Instruction applies are in a duty status during the time they are made available as witnesses and shall be free from restraint, interference, coercion, discrimination, or reprisals in presenting their testimony.

E3.2.2.5.2.3.2. Employees to whom the provisions of this Instruction apply normally shall be made available as witnesses, when requested by the examiner. The Director, HRD, WHS, or the Joint Staff PSD, shall arrange for the appearance of employee witnesses.

E3.2.2.5.2.3.3. The Director, HRD, WHS, or the Joint Staff PSD, shall notify the examiner and justify, in writing, when it is determined that it is administratively impracticable to comply with the examiner's request for the appearance of an employee witness. If the examiner deems the justification inadequate, it may be construed that the absent witness would have given testimony unfavorable to the employing OSD Component.

E3.2.2.5.2.4. Record of the Hearing. The examiner shall determine how the hearing is reported.

E3.2.2.5.2.4.1. When a verbatim transcript is ordered, the Director, HRD, WHS, or the Joint Staff PSD shall make the necessary arrangements.

E3.2.2.5.2.4.2. When the hearing is not reported verbatim, a suitable summary of pertinent portions of the testimony shall be made by the examiner and submitted to both parties for acceptance or written comment.

E3.2.2.5.2.4.2.1. If the examiner and the parties fail to agree on the summary, the parties are entitled to submit written exceptions to any part of the summary. Such exceptions must be received within reasonable time limits set by the examiner.

E3.2.2.5.2.4.2.2. Timely written exceptions and the summary constitute the report of the hearing.

E3.2.2.5.2.5. 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 report of the hearing, when held.

E3.2.2.5.2.5.1. Upon completion of the inquiry, the examiner shall make the grievance file available to the employee and the representative for review and comment.

E3.2.2.5.2.5.2. Written comments received within a reasonable time limit, as set by the examiner, shall be incorporated in the file.

E3.2.2.5.2.6. Grievance Examiner's Report. The examiner shall prepare a report of the findings and recommendations and submit it, with the grievance file, to the OSD PSAs through the Director, HRD, WHS. The Director, HRD, WHS, shall send the report to the OSD PSAs. Reports for grievants employed in the Joint Staff shall be forwarded to the OSD PSAs through the Joint Staff PSD.

E3.2.3. Decision on the Grievance

E3.2.3.1. The OSD PSA concerned shall accept and direct the implementation of the examiner's recommendations, and notify the employee and representative in writing within 20 calendar days of the date the OSD PSAs receives the report, except that:

E3.2.3.1.1. If the OSD PSA concerned decides to grant the relief sought by the employee, the decision shall be issued accordingly, without regard to the examiner's recommendation.

E3.2.3.1.2. If the OSD PSA concerned determines that the examiner's recommendations are unacceptable, the OSD PSA concerned shall transmit the grievance file with a specific statement of the basis for that determination to the Director, Administration and Management (DA&M), pursuant to delegation by the Deputy Secretary of Defense (Reference (m)) for decision, unless there is an intervening level of management between the OSD PSA concerned and the Deputy Secretary of Defense. In that case, the file shall be forwarded through the intervening management official, who may accept the grievance examiner's recommendation and issue the written decision or send the case file to the DA&M for decision. A copy of the OSD PSA's statement shall be furnished to the employee and representative. In cases involving grievances arising within the Office of the DA&M or WHS, the Deputy Under Secretary of Defense (DUSD) for Civilian Personnel Policy (CPP) will receive the case file.

E3.2.3.2. The DA&M or DUSD (CPP) shall issue a written notice of the decision. The notice must include a specific statement of findings on all issues covered by the examiner in the inquiry. The notice shall be sent to the employee with a copy for the representative and one copy incorporated in the grievance file.

E3.2.4. Records. The grievance file shall be sent to, and retained by, the Director, HRD, WHS, or the Joint Staff PSD, as provided by OPM regulations.

E3.3. MERIT PROMOTION GRIEVANCE PROCEDURES

E3.3.1. These procedures are applicable only for employees of the OSD Principal Staff who believe they were not rated and ranked properly in a merit promotion action.

E3.3.2. The presentation and processing of a problem or grievance under this section shall be in accordance with E3.1. and E3.2. of this Instruction, with the following exceptions:

E3.3.2.1. The presentation of the problem shall be made to the Assistant Director, Personnel Services, or Assistant Director, Executive and Political Personnel, HRD, WHS, or the Joint Staff PSD.

E3.3.2.2. If the employee is not satisfied with the results of the problem-solving procedure, he or she may present a formal grievance to the Director, HRD, WHS, or the Joint Staff PSD.

E3.3.2.3. The Director, HRD, WHS, shall obtain the services of a personnel official with expertise in the examining function from outside the OSD Principal Staff to serve as an examiner. This person may not have been involved in the merit promotion action and may not occupy a position subordinate to any official who recommended, advised, made a decision on, or was otherwise involved in the merit promotion action.

E3.3.2.4. The examiner shall conduct an inquiry into the grievance, complete the grievance file, and submit his or her report of findings and recommendation to the Director, HRD, WHS, within 30 calendar days of the date the examiner received the case. If an extension is needed, the employee will be notified in writing that the extension was granted.

E3.3.2.5. The Director, HRD, WHS, or the Joint Staff PSD shall fully consider the examiner's recommendations, and notify the employee and representative of the decision within 20 calendar days of the date the report is received. If an extension is needed, the employee will be notified in writing that the extension was granted. The notice to the employee shall advise him or her that the decision is final and not subject to further review or appeal.

E3.4. PERFORMANCE RATING GRIEVANCE PROCEDURE

E3.4.1. These procedures apply only to an employee's final performance appraisal rating of less than fully successful that has been properly certified by the employee's OSD PSAs or other appropriate management official under Administrative Instructions No. 63 (Reference (n)). This procedure does not apply to employees under NSPS according to Subchapter 1920 of DoD 1400.25-M (Reference (o)).

E3.4.2. Presenting the Grievance. An employee who is dissatisfied with his or her performance rating of less than fully successful, which has been certified by an OSD PSA or other appropriate management official may grieve such rating. The grievance must be signed, dated, and presented in writing within 15 calendar days of the date the employee was notified of the rating. The grievance must include:

E3.4.2.1. Name of the employee, position title, grade, and the organizational entity to which assigned.

E3.4.2.2. Name of the employee's representative, if any.

E3.4.2.3. Date the employee was notified of his or her performance rating.

E3.4.2.4. A complete copy of the employee's Performance Appraisal (i.e. DD Form 2799 or equivalent appraisal form) and related documents.

E3.4.2.5. A clear and concise statement of the specific reason why the employee disagrees with the rating, based on his or her demonstrated performance in relation to the performance standards developed for each critical element at issue.

E3.4.2.6. The performance rating the employee believes is warranted based on his or her demonstrated performance in relation to the performance standards developed for each critical element at issue. Sufficient detail must be included to show how, why, and in what manner the employee's performance warrants a higher rating than the one received, based on the demonstrated performance for each critical element.

E3.4.2.7. The grievance must be submitted to the Director, HRD, WHS, or the Joint Staff PSD.

E3.4.3. Processing the Grievance. The procedures in E3.2.2. shall apply.