

## **CHAPTER 3 FAA APPEALS**

### **301: Procedure**

For a case involving a suspension of more than 14 days, a reduction in pay or grade, or a removal or furlough of 30 days or less, the employee may appeal the decision by filing an appeal within 10 days of receipt of the decision to the next level above the deciding official. An appeal of a reduction-in-force action may be filed within 10 days of the effective date of the separation. The appeal will be filed in writing and contain the specific relief requested. A panel will be designated by the FAA and the employee within 10 days from receipt of the appeal. The hearing shall take place as soon as practicable. After hearing the case and closing the record, the panel will have 10 days to render a written decision. There will be no discovery used by either party. Ten (10) days prior to the hearing the employee will provide a copy of all the supporting documentation for his/her appeal and witness lists will be exchanged.

### **302. Definitions**

A. Day: calendar day.

B. Partisan: a person who is knowledgeable of the work conditions, environment, and practices where the appeal was filed and who is an employee of the FAA. The partisan shall not be directly involved with the case. The designated partisan cannot have served as an advocate for the FAA or the employee in any phase of the disciplinary or removal action being appealed. The partisan for management cannot be the proposing official or the deciding official.

C. Employee: a permanent employee of the FAA who is not serving a probationary or trial period or on a temporary appointment.

D. Arbitrator: a disinterested person chosen by the parties from the designated pool.

### **303. Coverage**

A. Removals for conduct, performance, and nondisciplinary reasons.

B. Suspensions of more than 14 days.

C. Reductions in force, furloughs of 30 days or less, reductions in pay or grade

### **304. Exclusions**

A. Any employee covered by a collective bargaining agreement.

B. Retirement.

C. Life or health insurance.

D. National security determinations under 5 USC 73.

E. Examination, certification, or appointment.

F. Classification of any position that does not result in reduction in grade or pay.

G. Removal of an employee on a trial or probationary period or a temporary appointment.

H. Matters that are covered by any other statutory appeals process or any action not covered by Chapter 1, Due Process.

I. Claims of statutory prohibited discrimination may not be raised in the FAA appeal procedure. The FAA appeals procedure shall be designated as an alternative disputes resolution process for purposes of 29 CFR part 1614. Accordingly, if an employee wishes to raise a claim of statutorily prohibited discrimination with respect to a matter that is subject to appeal under the FAA appeals procedure, the employee must:

- 1) contact an EEO counselor no later than 45 days after the effective date of the action being appealed;
- 2) file an appeal under the FAA appeals procedure in accordance with the time limits stated above;
- 3) complete the FAA appeals procedure and receive a final decision; and
- 4) file a formal complaint of discrimination within 10 days of receipt of the final FAA appeals procedure decision or within 90 days of the first contact with the EEO counselor.

### **305. Tri-Party Panel**

The panel shall be comprised of three persons:

- One partisan selected by management from within the FAA and from where the appeal was generated;
- One partisan selected by the appellant from within the FAA and from where the appeal was generated; and
- One arbitrator selected by the parties from the designated pool.

The panel will convene within the commuting area of the appellant, whenever possible. If the hearing cannot be held in the commuting area, the appellant's travel to the hearing will be paid by the FAA. Decisions made by the panel will be final and binding. The panel shall have no authority to mitigate the penalty on performance cases. The panel shall have the authority to mitigate the penalty on cases involving conduct. The panel shall have the authority to award back pay and benefits consistent with applicable FAA rules and laws. The panel shall be limited to ruling on the merits of the case and the application of FAA rules and the law. The panel shall not reverse or mitigate an action based on a finding of violation of FAA rules unless the record demonstrates that it is more likely than not that absent the violation, the deciding official would have reached a different decision. The ruling will be made by majority vote of the panel. The decisions of the panel shall not be precedent setting.

No attorney fees will be paid by the FAA during the internal FAA grievance and appeal processes. If they choose representatives, the FAA and the appellant shall designate their representatives prior to the hearing and inform the other party in writing. If travel is necessary to attend the hearing, the employee will pay for the travel of his or her representative. Decisions of the panel shall be issued as final orders of the Administrator under 49 U.S.C. section 46110. An appellant may seek judicial review of the panel's order by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the Court of Appeals of the United States for the circuit in which the appellant resides no later than 60 days after the panel's decision is issued.

There shall be a verbatim transcript prepared of the hearing and paid for by the line of business (LOB). Copies of the transcript must be ordered by the parties from the official court reporter. All appeal records and documents from the hearing will be maintained by the FAA in accordance with applicable FAA rules and laws.

### **306. Supplemental Rules**

A. A pool of three to five arbitrators will be selected and maintained by each servicing HRMD for use in the appeals process. Selection of one arbitrator from the pool will be by mutual agreement of the parties or by alternating striking names until one selection remains. The selected arbitrator's fees will be paid by the LOB.

B. The servicing HRMD will provide logistical support for program implementation and maintenance.

C. Each party will be responsible for paying the travel costs for his or her witnesses, except for those witnesses who are summoned to testify by the panel and who are employees of the FAA. Such employees shall be on official time, including travel and per diem.

D. Employees if otherwise in a duty status will be accommodated with schedule changes as necessary to perform their duties as witnesses, appellants, or as representatives to attend the hearing in a duty status.

E. Each party is responsible for securing his or her own witnesses.

F. The partisans shall be selected from an area as close as possible to the location of the hearing while meeting all the criteria for partisans outlined in the definitions section.

G. Travel for the partisans will be paid by the LOB.

H. A period of time will be set aside for the arbitrator to instruct the partisans in due process, how to weigh evidence, weighing testimony, and how to judge the merits of the case.

I. Hearings will be scheduled during normal administrative duty hours.

### **307. Timeframes**

All time frames may be extended with mutual agreement of the parties. Agreements shall be in writing.

### **308. Records**

All grievance and appeal records and documents will be maintained in accordance with applicable FAA rules and the Privacy Act. When an employee is given advance notice, the official who proposed the action

establishes a disciplinary file. If the employee appeals, the file becomes the appeal file and a copy provided to the tri-party panel at the panel's request. The file shall contain the advance notice and any employee response; material relied on to support the notice, correspondence or notations of conversations with the employee, the written summary of an oral response, a copy of the final decision, and a copy of the employee's appeal.