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Nonbargaining Disciplinary, Grievance, and Appeal Procedures

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Summary of Changes for Subchapter 650

Note that changes are cumulative. Numbering of a section may be modified by a change made subsequently.

1. Overall ELM Revisions

The entire ELM is reformatted, with changes in typographical treatment where necessary, for ease of use for printing and online viewing. Addresses are reformatted to reflect machine readability standards.

Addresses and telephone numbers are updated in the text, and Appendix C, Addresses, previously added by PB 21809, 2/20/92, is deleted.

Form titles in the text and in Appendix B, Form Titles, were updated when the ELM was issued online in 1996. Any subsequent updating is noted in the revisions specific to this segment noted below. (PB 21929, 9/26/96)

2. Revisions Specific to This Segment

Position titles and references to suspensions are updated.

Substantive changes are marked with vertical bars in the margins or printed in bold type in tables and certain exhibits.

651.5 Letters of Warning in Lieu of Time-Off Suspensions replaces **Suspensions, Fourteen Days or Less** and refers to Management Instruction EL-650-96-3 for detailed procedures. (PB 21922, 6/20/96)

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650 Nonbargaining Disciplinary, Grievance, and Appeal Procedures

651 **Disciplinary and Emergency Procedures**

651.1 **Scope**

This part establishes procedures for (a) disciplinary action against nonprobationary employees who are not subject to the provisions of a collective-bargaining agreement, and (b) emergency action for conduct which also normally warrants disciplinary action.

651.2 **Representation**

Employees have free choice of representation. Representatives designated to assist employees, if postal employees and if otherwise in a duty status, are granted a reasonable amount of official time to respond to notices of proposed disciplinary action, prepare for and represent the employee at a hearing held in accordance with 652.23, and while representing an employee who has appealed a letter of warning or emergency placement in a nonduty status in accordance with 652.3.

651.3 **Emergency Placement in Off-Duty Status**

An employee may be placed in an off-duty status immediately (without pay), but remains on the rolls, when: (a) intoxicated, (b) failing to observe safety rules, (c) failing to obey a direct order, or (d) disrupting day-to-day postal operations in any other way. The employee is returned to duty status when the cause for nonpay status ceases. Placement in an off-duty status is confirmed in writing, stating the reasons, and advising the employee that the action is appealable. Use of these emergency procedures does not preclude disciplinary action based on the same conduct.

651.4 **Letters of Warning**

When warranted by the failure of nondisciplinary corrective measures such as discussions or counselings, or by the seriousness of the offense, a letter of warning may be issued, usually by the employee's immediate supervisor. The written warning should contain (a) specific reasons for the letter, and (b) a statement of appeal rights (see 652.311 and 652.312).

651.5 **Letters of Warning in Lieu of Time-Off Suspensions**

Letters of warning in lieu of time-off suspensions replace time-off suspensions for nonbargaining employees, except when required otherwise by statute. This policy does not preclude management from placing a nonbargaining employee in an indefinite nonpay, nonduty status when there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed. For detailed procedures, see Management Instruction EL-650-96-3, *Letters of Warning in Lieu of Time-Off Suspensions*.

651.6 Adverse Actions**651.61 Definition**

Adverse actions are defined as discharges, suspensions of more than 14 days, furloughs without pay, and reductions in grade or pay.

651.62 Policy

Action may be taken against an employee (a) because lesser measures have not resulted in the correction of deficiencies in behavior or performance, (b) because of the gravity of the offense, or (c) for nondisciplinary reasons, such as the correction of a position misranking.

651.63 Notice

Unless the circumstances of a particular case make it impractical, the employee's immediate supervisor issues a written notice of proposed adverse action. This notice includes (a) the action proposed, with specific and detailed reasons, (b) the instructions for responding to the notice, (c) a statement of the right of the employee or representative to review all material relied upon in proposing the action, and when and where the material is available for review, and (d) the name of the official rendering the decision. The proposal also advises the employee that a reasonable amount of official time is allowed for the preparation and presentation of a reply if the employee is otherwise in a duty status, and that the proposed action will be effected no sooner than 30 calendar days after the employee receives the notice.

651.64 Response

The employee or representative may respond to the notice in writing, in person, or both, to the decision-making authority or designee. When the proposal notice is issued by an installation head or officer, response may be made to that official or representative. The employee or representative may respond and present evidence, including affidavits, within 10 calendar days from receipt of the notice. The time limits for responding may be extended for reasonable cause.

651.65 Decision

The decision-making official, who must be higher in authority than the proposing official, considers the employee's response and gives a written decision, including reasons, as soon as possible after the employee's time to respond has expired. In field installations, the installation head or designee usually makes the decision; in other offices, the decision is made by a branch manager or above. If the decision is to effect the adverse action or to modify it to a lesser penalty, the employee's appeal rights, including Merit Systems Protection Board appeal rights, if appropriate, are stated.

651.66 Duty Status

The employee, unless otherwise provided in 651.67, remains in a pay status either on the job or on administrative leave, at the option of the employer, during the notice period which must be at least 30 calendar days. Discharged or indefinitely suspended employees who appeal remain on the rolls in a

nonpay, nonduty status until the disposition of the case through the chosen appeal procedures.

651.67 **Exceptions to Thirty-Day Notice**

When there is reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment may be imposed, the advance notice before effecting the adverse action may be reduced to no less than 7 calendar days. At the expiration of the reduced notice period, the decision is issued at once. If the decision is to suspend the employee indefinitely, the individual remains on the rolls in a nonpay, nonduty status pending a final decision or until the suspension is otherwise terminated. If the decision is to remove the employee, the individual remains on the rolls only if a timely appeal is filed.

652 **Grievance and Appeal Procedures**

652.1 **Scope**

This section establishes grievance and appeal procedures for employees not subject to the provisions of a collective-bargaining agreement. These procedures do not (a) deprive an employee of the right to remedy an allegation of discrimination through equal employment opportunity procedures; or (b) deprive a preference eligible or other entitled employee to appeal an adverse action to the Merit Systems Protection Board; however, if Merit Systems Protection Board rights are exercised, the employee waives access to the procedures in this section. This section does not apply to actions for which other appeal procedures are provided (except EEO).

652.2 **Appeal of Adverse Actions and Suspensions of Fourteen Days or Less**

652.21 **Coverage**

652.211 **Category of Employee**

Upon receipt of a letter of decision ordering an adverse action or a suspension of 14 days or less, the following employees may appeal:

- a. EAS and PCES Level I employees who have completed 6 months of continuous USPS service, and
- b. EAS and PCES Level I employees who have completed a minimum of 12 months of combined service, without a break of a workday, in positions in the same line of work in the Civil Service and USPS — unless any part of this service followed a temporary appointment in the competitive service with a definite time limitation.

652.212 **Exclusion**

Officers (PCES Level II) are not covered by these procedures.

652.22 Appeal to Step I**652.221 Field Employees**

These employees may submit a written request for a hearing, or waiver of a hearing, within 15 calendar days of receipt of a letter of decision on an adverse action. This appeal is made to the Step I official (area vice president or designee). A copy of the appeal is sent to the official taking the action, who forwards the case file to the Step I official.

652.222 Headquarters, Headquarters Field Units, and Inspection Service Employees

These employees may submit a written request for a hearing, or waiver of a hearing, to the Step I official (vice presidents, chief inspector, or designee) within 15 calendar days of receipt of a letter of decision on an adverse action. A copy is sent to the official taking the action, who forwards the file to the Step I official.

652.223 Exceptions

In cases where a vice president or other officer reporting directly to the postmaster general is the deciding official, the PMG or designee is the sole appellate official. These exceptions apply to both 652.231 and 652.232.

652.23 Hearings**652.231 Action If No Hearing Requested**

If the appellant does not request a hearing, the Step I official determines whether the issues on appeal can be decided on the record and on written submissions by the appellant and management. If the appeal cannot be judged fairly without a hearing, the Step I official schedules a hearing.

652.232 Action When Hearing Requested

- a. If the appellant requests a hearing, a hearing officer is assigned by the Step I official. The hearing is held as soon as possible, usually at the installation where the appellant is located. The employee receives at least 7 calendar days' notice of the hearing.
- b. Conduct of the hearing is informal, but consistent with the orderly presentation of the case. Testimony is given under oath or affirmation. While legal rules of evidence do not apply, testimony and evidence is held within reasonable bounds of relevancy. The appellant and the employer have the right (1) to be present at the hearing, (2) to be represented, (3) to present evidence and witnesses, and (4) to cross-examine the other party's witnesses. The appellant and representative, if a postal employee in a duty status, are granted a reasonable amount of official time to prepare for the hearing. The appellant may choose self-representation.
- c. Before the hearing, both management and the appellant will advise the Step I official or the hearing officer of their choice of representative witnesses and the nature of their testimony. This information will be exchanged between both parties.

652.233 Management Obligation for Witnesses

Management has an obligation to make available witnesses who are postal employees and approved by the hearing officer as having relevant testimony,

unless it is administratively impractical to do so. In these cases, witnesses may be required by the hearing officer to answer written questions.

652.234 **Workhours Compensation**

The appellant, representative, and witnesses, if postal employees in a duty status at the time of the hearing, are compensated for straight time hours spent at the hearing that are part of their regularly scheduled workday. Witnesses are not present at the hearing except when testifying, unless they are also acting as representatives or technical advisors.

652.235 **Noninterference Rule**

The appellant, representative, and witnesses are not subject to restraint, interference, coercion, discrimination, or reprisal.

652.236 **Transcript**

A written transcript of the hearing taken by a court reporter or other qualified person is normally made of the hearing proceedings. The office or installation initiating the adverse action will arrange for and pay all costs of the transcript. If, because of geographical remoteness or other unusual circumstances, a written transcript cannot be obtained, an exception to the procedures must be authorized in advance by the appropriate management official.

652.24 **Step I Decision**

The hearing officer prepares the findings of fact for consideration by the Step I official as soon as possible after receipt of the written transcript of the hearing. The Step I official reviews the case and issues a prompt decision, usually within 15 calendar days. The letter to the appellant includes the reasons for the decision and further appeal rights. Enclosed with that letter will be a copy of the written transcript of the hearing and the hearing officer's findings.

652.25 **Step II Appeal and Decision**

An employee or representative may appeal in writing, within 15 calendar days after receiving the Step I decision, to the PMG or designee — with a copy to the Step I official. Appeals are addressed to the

POSTMASTER GENERAL
C/O VICE PRESIDENT, LABOR RELATIONS
US POSTAL SERVICE
475 L'ENFANT PLZ SW
WASHINGTON DC 20260-4200.

Upon receipt of a copy of the appeal, the Step I official forwards the file to the vice president of Labor Relations. The case is reviewed and a written decision is usually due within 15 days of the receipt of the appeal. This decision is final.

652.3 **Other Grievances**

652.31 **Coverage**

652.311 Employees in EAS-16 and below, regardless of length of service, may appeal letters of warning, emergency placement in a nonduty status, and other

matters not covered by 652.2 by using the procedures in sections 652.32 through 652.34.

652.312 PCES Level I and EAS-17 and above employees have access to these procedures only to appeal discipline in the nature of a letter of warning and emergency placement in a nonduty status.

652.32 **Step A**

An employee or representative states the grievance in writing to the immediate supervisor within 10 calendar days of learning its cause. The employee or representative has the opportunity to discuss the grievance with the supervisor during this period. The supervisor gives a written decision within 5 calendar days **after receipt of grievance**. If this is impossible because of extenuating circumstances, the decision, when written, must explain the reason(s) for the delay.

652.33 **Step B**

A field employee or representative may appeal in writing within 7 calendar days after receipt of the Step A decision to the installation head. (If the installation head is the immediate supervisor, appeals are made to the next higher level of management.) A Headquarters, Headquarters field unit, or Inspection Service employee or representative may appeal within the same time limits to the next higher level of management (superior to the supervisor), at least a manager or above. The appeal must include the employee's name, title, grade, location, nature of grievance, and basis for appeal. Upon receipt of the appeal, the Step B official discusses the grievance with the employee or representative and renders a decision in writing within 10 calendar days after receipt of the appeal. Usually this decision is final.

652.34 **Review**

The employee or representative may request a review of the Step B decision. The request of an employee administratively responsible to the area vice president is directed to the area Human Resources manager. The request of a Headquarters, Headquarters field unit, or Inspection Service employee is sent to the vice president of Labor Relations, or designee, with a copy to the Step B official, who forwards the file to the review official. The request is in writing and gives specific reasons why the employee believes the Step B decision should be reviewed. The request is made within 15 calendar days from receipt of the Step B decision. The review official replies in writing and states the disposition of the employee's request. This reply is final.