



Ohio Administrative Code Rule 5501-2-02 Disciplinary appeals.

Effective: September 26, 2003

(A) An employee in the career professional service may appeal a demotion or a suspension of more than three days only as provided in this rule.

Parties to the appeal shall be the employee, acting as appellant, and a management representative, acting as appellee.

(B) The employee may appeal if, within ten days after being notified in writing that the demotion or suspension will be imposed, the employee submits a written request for an appeal to the deputy director having supervision over that employee or the deputy director's designee. An employee who does not submit a timely written request for an appeal waives any right to an appeal.

Upon timely submission of a written request for an appeal, the employee shall have a right to a hearing before the director or the director's designee, who shall act as the hearing officer. No person shall act as hearing officer who also participated in the employee's predisciplinary hearing on the demotion or suspension being appealed.

(C) The hearing officer shall schedule a hearing within fifteen days, but not earlier than seven days, of the date employee submits the written request for an appeal. Immediately upon scheduling the hearing, the hearing officer shall send written notice to the parties of the date, time and place of the hearing.

Each party, upon request, shall receive one continuance of up to three days. The hearing officer may grant further continuances within the hearing officer's discretion.

Each party, not less than five days prior to the date of the hearing, shall submit to the hearing officer and the other party a list of witnesses the party expects to call. The hearing officer has the right to limit witnesses on the basis of redundancy and relevance.



(D) Prior to calling the hearing to order, the hearing officer shall inform the employee that the employee is permitted to have counsel present. The hearing officer then shall call the hearing to order, make introductions, and distribute a sign-in sheet. If the employee is accompanied by counsel, the hearing officer shall inform the employee that counsel's participation is limited to protecting the rights of the employee when the employee is called as a witness, but that counsel shall not examine or cross examine any witnesses, including the employee.

(1) The hearing officer shall review the following:

(a) The purpose of the hearing;

(b) The charges giving rise to the demotion or suspension;

(c) Documentation supporting the demotion or suspension.

(2) The hearing officer may administer oaths or affirmations to any person called as a witness.

(3) The hearing officer may ask questions of the employee, the management representative and the witnesses.

(4) Each party, with the permission of the hearing officer and at the hearing officer's discretion, may do the following:

(a) Present evidence, statements and witnesses in support of that party's position;

(b) Ask questions of the witnesses;

(c) Comment on, refute or rebut the testimony of the witnesses and any other evidence submitted.

(5) The hearing officer may refuse to permit a party to call a witness not named on that party's witness list submitted under paragraph (C) of this rule.

(E) After considering the evidence presented by the parties, the hearing officer shall grant, grant in



modified form, or deny the relief requested by the employee. The hearing officer shall deny the relief requested by the employee unless the hearing officer finds, by clear and convincing evidence, that the suspension or demotion was not justified.

The hearing officer shall, within fifteen days after the date of the hearing, send the director of transportation a written report of the decision. The report shall set forth the reasons for the decision.

The director shall issue an order approving, modifying, or disapproving the hearing officer's decision. If the director modifies or disapproves the hearing officer's decision, the order shall state the reasons therefore.

An order issued by the director under this rule cannot be appealed in any forum.

(F) Each party is obligated to furnish its own witnesses or other evidence for the hearing. The hearing officer has no subpoena authority. The hearing officer, in making a final decision, may take into consideration the absence of witnesses or other evidence.

Each party shall bear the expense of its own witnesses who are not employees of the department of transportation. Each party shall bear the expense of providing its own documents or other evidence.

For purposes of conducting the hearing, the director of transportation shall make reasonably available any employee of the department of transportation, including the appellant, during regular working hours and shall bear the expense. The cost of the hearing officer and any meeting space shall be paid by the department of transportation.

(G) The hearing shall not be recorded nor a transcript taken.

An employee may submit the written request for an appeal under paragraph (A) of this rule personally to the deputy director or the deputy director's designee, who shall sign and date stamp it with the date of submission. When different work locations are involved, or if the employee elects not to submit the request in person, the employee may send the written request to the deputy director or the deputy director's designee by regular U.S. mail.



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The request for an appeal shall be submitted on a form supplied by the employer. Forms shall be made available through the employee's personnel officer.

Any notice required to be sent by a hearing officer, and any order required to be issued by the director of transportation, may be delivered in person or sent by regular U.S. mail.

Any request, witness list, or other document submitted by a party is timely if postmarked within the time period designated for its submission.