

**MISSISSIPPI STATE PERSONNEL BOARD**



**EMPLOYEE APPEALS BOARD  
ADMINISTRATIVE RULES**

**EFFECTIVE 3-01-2010**

**Mississippi Employee Appeals Board**

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## Table of Contents

<b>INTRODUCTION .....</b>	<b>1</b>
<b>GRIEVABLE ISSUES .....</b>	<b>1</b>
<b>ADMINISTRATIVE RULES .....</b>	<b>2</b>
<b>I. NOTICE OF APPELLANTS' RIGHTS .....</b>	<b>2</b>
<b>II. WHO MAY APPEAL? ACTIONS WHICH MAY BE APPEALED .....</b>	<b>2</b>
<b>III. EXHAUSTION OF REMEDIES .....</b>	<b>2</b>
<b>IV. PERFECTION OF APPEAL BY TIMELY FILING.....</b>	<b>3</b>
<b>V. CONTENT OF NOTICE OF APPEAL .....</b>	<b>3</b>
<b>VI. JURISDICTION .....</b>	<b>4</b>
<b>VII. PARTIES .....</b>	<b>4</b>
<b>VIII. FILING OF PLEADINGS AND OTHER DOCUMENTS; COPIES TO BE MADE AVAILABLE.....</b>	<b>4</b>
<b>IX. NOTICE TO RESPONDING AGENCY OF FILING OF APPEAL.....</b>	<b>4</b>
<b>X. CONSOLIDATION OF APPEALS .....</b>	<b>4</b>
<b>XI. ASSIGNMENT OF HEARING OFFICER; SETTING OF HEARING .....</b>	<b>4</b>
<b>XII. CONTINUANCES; RESCHEDULING OF HEARINGS; CANCELLATIONS.....</b>	<b>5</b>
<b>XIII. MOTIONS .....</b>	<b>5</b>
<b>XIV. WITNESSES.....</b>	<b>6</b>
<b>XV. SUBPOENAS.....</b>	<b>6</b>
<b>XVI. FAILURE TO APPEAR AT HEARING .....</b>	<b>8</b>
<b>XVII. CONDUCT OF HEARING .....</b>	<b>8</b>
<b>XVIII. EVIDENCE.....</b>	<b>8</b>
<b>XIX. PRESERVATION OF RECORD OF HEARING; TRANSCRIPTION OF RECORD OF HEARING .....</b>	<b>9</b>
<b>XX. APPEALS BOARD COPY FEES .....</b>	<b>9</b>
<b>XXI. ORDER OF PROOF; BURDEN OF PROOF .....</b>	<b>9</b>

<b>XXII. ORDER TO BE FILED UPON COMPLETION OF HEARING.....</b>	<b>10</b>
<b>XXIII. COMPLIANCE WITH ORDER.....</b>	<b>10</b>
<b>XXIV. RELIEF TO BE GRANTED.....</b>	<b>10</b>
<b>XXV. BILL OF EXCEPTIONS.....</b>	<b>10</b>
<b>XXVI. REVIEW BY THE FULL EAB .....</b>	<b>11</b>
<b>XXVII. JUDICIAL REVIEW .....</b>	<b>11</b>
<b>XXVIII.PLEADINGS AND BRIEFS .....</b>	<b>12</b>
<b>XXIX. ASSESSMENT OF FEES AND COSTS.....</b>	<b>12</b>
<b>XXX. COMPUTATION OF TIME.....</b>	<b>12</b>
<b>XXXI. JUDICIAL CONDUCT .....</b>	<b>12</b>
<b>XXXII. AMENDMENT OF RULES; VALIDITY OF RULES; ENFORCEMENT OF RULES.....</b>	<b>12</b>
<b>APPENDIX A .....</b>	<b>13</b>

## **INTRODUCTION**

In 1980, the Mississippi State Legislature mandated the creation of the Mississippi Employee Appeals Board (hereinafter referred to as the “EAB”) in order to provide a fair and impartial forum beyond the agency level for consideration of employee grievances and/or disciplinary actions. The EAB consists of three Hearing Officers who provide employees of the State of Mississippi an opportunity, in compliance with the EAB’s Rules, to appeal agency level decisions adversely affecting the employee’s service.

The rules and regulations governing the EAB’s actions are promulgated by the Mississippi State Personnel Board (hereinafter referred to as the “MSPB”) and may be found in Chapter 10 of the MSPB’s Policy and Procedures Manual. As a service to those who utilize the EAB’s administrative appeal process, the EAB provides interested individuals with this printed booklet containing the rules and regulations. This booklet is provided for ease of reference only, and, to the extent that the rules contained herein differ from those found in the MSPB Policy and Procedures Manual, the Manual controls. If you have any questions about the EAB or its administrative processes, please do not hesitate to contact the EAB at 601-359-2774.

## **GRIEVABLE ISSUES**

Chapter 10 of the MSPB’s Policy and Procedures Manual provides information concerning State employee grievance procedures. The following issues are listed as grievable under these procedures.

- A. written reprimands;
- B. application of personnel policies, procedures, rules, regulations, and statutes;
- C. acts of reprisal against an employee for using the grievance procedure;
- D. complaints of discrimination on the basis of race, color, creed, sex, religion, national origin, age, disability, or political affiliation;
- E. any matter of concern or dissatisfaction to an employee if the matter is subject to the control of agency management, except those listed as non-grievable;
- F. performance review ratings to the extent they affect an employee’s employment status or compensation;
- G. permanent relocation of an employee as a disciplinary measure, and/or where the employee can present substantive evidence that the management decision to relocate the employee was arbitrary or capricious;
- H. dismissal or adverse action taken against an employee who reports an alleged improper governmental action to a State investigative body, as defined in Mississippi Code Annotated § 25-9-171.

## **ADMINISTRATIVE RULES**

### **I. NOTICE OF APPELLANTS' RIGHTS**

Each agency shall give notice to all applicants and employees of their rights regarding appeals and shall make available copies of the administrative rules of the EAB.

### **II. WHO MAY APPEAL? ACTIONS WHICH MAY BE APPEALED**

- A.** A permanent State Service employee may appeal any action adversely affecting his or her compensation or employment status after exhausting applicable agency grievance procedures.
- B.** A permanent State Service employee may appeal any grievable action and/or a disciplinary action.
- C.** No person may appeal a non-grievable action.
- D.** A permanent State Service employee, probationary employee in a State Service position, or non-State Service employee in, or applicant for, an authorized employment position in an agency which employs State Service employees, may appeal alleged acts of discrimination based on race, color, religion, national origin, sex, age, disability, or political affiliation in any personnel action or unlawful employment practice.
- E.** A permanent State Service employee, probationary employee in a State Service position, or non-State Service employee in, or applicant for, an authorized employment position in an agency which employs State Service employees, may appeal alleged acts of retaliation based upon the employee or applicant's reports of alleged improper government action to a State investigative body.
- F.** An employee may appeal the decision that he or she is not eligible to receive donated leave because the injury or illness of the employee or member of the employee's immediate family is not, in the appointing authority's determination, a catastrophic injury or illness.

### **III. EXHAUSTION OF REMEDIES**

- A.** No person may file an appeal with the EAB until all applicable agency-level grievance procedures have been exhausted in accordance with MSPB policies, rules and regulations.
- B.** Except as authorized under federal law, no aggrieved party may file a petition for judicial review with a court of competent jurisdiction until a final written decision and Order on a full EAB review has been filed by the EAB.

#### **IV. PERFECTION OF APPEAL BY TIMELY FILING**

- A.** All appeals to the EAB shall be initiated by filing a written Notice of Appeal. Notice of Appeal forms shall be made available by the EAB to all State agencies and employees.
- B.** A Notice of Appeal must be filed within fifteen (15) calendar days after the date a person receives written notice of the final decision of an alleged grievable action or within fifteen (15) calendar days of the first attempted delivery date by certified mail, return receipt requested.
- C.** A non-refundable fee of one hundred dollars (\$100.00) in the form of a cashier's check, bona fide attorney's check, or money order made payable to the "Mississippi Employee Appeals Board" shall be filed by the appealing party with each Notice of Appeal. Cash or personal checks will not be accepted.

#### **V. CONTENT OF NOTICE OF APPEAL**

- A.** The Notice of Appeal shall contain:
  - 1)** The names and mailing addresses of all parties and, if known, the names and mailing addresses of their attorneys, if any;
  - 2)** If applicable, the appealing party's:
    - employing agency;
    - assigned work station (town, city, county) and organizational location (office, bureau, division, branch) within employing agency;
    - immediate supervisor;
    - job title;
    - date of hire; and
    - date of termination.
  - 3)** A statement, in sufficient detail, of the facts upon which the appeal is taken, including the effective date of any alleged grievable action, and why such action is in error;
  - 4)** A statement of the final action taken and/or decision made as a result of the agency-level grievance proceedings, including the effective date of such final action;
  - 5)** A statement of the relief requested.
- B.** The Notice of Appeal shall be accompanied by copies of all documents related to the appeal in the possession of the employee. Such documents, when applicable, shall include, but not be limited to, performance review documents, correspondence between the appealing party and the responding agency, written reprimands, grievance forms, pre-disciplinary notice, and final disciplinary notice.

## **VI. JURISDICTION**

When an appeal is filed, the EAB shall determine whether or not it has jurisdiction. If not, the EAB shall on its own Motion dismiss same and mail or deliver a copy of the Order of dismissal to all parties.

## **VII. PARTIES**

Unless the Notice of Appeal names some other respondent, the appealing party's employing State agency shall be considered the only respondent.

## **VIII. FILING OF PLEADINGS AND OTHER DOCUMENTS; COPIES TO BE MADE AVAILABLE**

- A.** When an appeal is filed, the EAB shall assign it a docket number.
- B.** All pleadings and other documents filed in the appeal shall be entered on a docket to be maintained by the EAB. The EAB shall make a notation of the filing date on all such pleadings and other documents. Pleadings and documents may be transmitted by facsimile equipment in situations the EAB clerk determines are of an emergency nature or that present compelling circumstances.
- C.** Copies, including certified copies, of pleadings and other documents filed in the appeal shall be made available to either party at a reasonable fee.
- D.** Copies of any and all pleadings, briefs and requests filed by any party to an appeal must be served on every other party or his or her attorney and a Certificate of Service pursuant thereto must be filed with the EAB by the filing party.
- E.** All pleadings, briefs, and requests filed by any party to an appeal must be signed by such party or his or her attorney and must specify the assigned docket number.

## **IX. NOTICE TO RESPONDING AGENCY OF FILING OF APPEAL**

When an appeal is filed, the EAB shall deliver a copy of the Notice of Appeal to the responding party, or parties, named therein which shall be official notice of same.

## **X. CONSOLIDATION OF APPEALS**

When two or more pending appeals involve a common question of law or fact, the EAB may on its own Motion order that the appeals be consolidated.

## **XI. ASSIGNMENT OF HEARING OFFICER; SETTING OF HEARING**

- A.** When an appeal is filed, the EAB shall assign a Hearing Officer and set a date, time and place for the hearing.
- B.** When, in the opinion of the Chief Hearing Officer, the issues and circumstances of an appeal warrant that the hearing be conducted before the full EAB instead of a single Hearing Officer, he or she may issue an Order or notice to that effect. A copy of such Order or notice shall be mailed or delivered to all parties.

- C. A Notice of Hearing shall be sent via Certified U.S. Mail, Return Receipt Requested, to each party or attorney. After receipt of such notice, each party shall acknowledge such receipt by completing and returning an Acknowledgment of Receipt of Notice of Hearing form provided with the Notice of Hearing.
- D. No hearing shall be set before thirty (30) calendar days have elapsed after the filing date of the Notice of Appeal.
- E. Continuances will not be considered within ten (10) calendar days prior to the hearing for any reason less than good cause, serious illness, or death.

## **XII. CONTINUANCES; RESCHEDULING OF HEARINGS; CANCELLATIONS**

- A. Continuances or cancellations requested by either party shall be granted within the discretion of the EAB only for good cause. The EAB may assess a reasonable fee against the party requesting the continuance or cancellation, including court reporter fees.
- B. When a continuance or cancellation is granted to a party whose request is made less than ten (10) calendar days before the hearing date, the EAB may award reasonable costs incurred in connection with the continuance to any other party.
- C. After the EAB has granted the continuance, the moving party shall be responsible for contacting the opposing party and the Hearing Officer in order that they may work out a suitable date for the hearing. When the hearing date has been confirmed, the moving party shall contact the EAB office so they may employ a court reporter and reserve a courtroom.
- D. A written Motion and proposed Order including the new date and time of the hearing must be prepared by the moving party. The original Order should be submitted to the Hearing Officer for signature, and the original Motion and copy of the Order should be forwarded to the EAB office.
- E. When a continuance is granted or a hearing is rescheduled or relocated for any reason, each party shall be responsible for notifying their witnesses of the date, time, and location of the hearing.

## **XIII. MOTIONS**

An application to the EAB for an Order shall be by written Motion. Motions by any party shall be considered by the EAB under the following conditions:

- A. Motions and responses to Motions shall be filed in writing unless made during a hearing.
- B. Motions shall state with particularity the grounds therefore and shall set forth the relief or Order sought.

- C. Any Motion heard prior to the merits shall be the responsibility of the moving party. The moving party shall be responsible for contacting the opposing party, the Hearing Officer and the EAB to arrange for a date and time for a telephone conference or a hearing on a Motion unless by its nature no hearing is required. After the hearing is arranged, the moving party shall confirm the arrangements in writing to the EAB and all other parties.
- D. A hearing on a Motion may be conducted by telephone conference at the expense of the moving party.
- E. The EAB may, in its discretion, limit the time for filing Motions in any appeal.
- F. The EAB shall issue Orders on Motions in an expeditious manner.

#### **XIV. WITNESSES**

- A. Each party, no later than ten (10) calendar days prior to the hearing date, shall file with the EAB a list of witnesses such party will call to testify at the hearing. The list shall contain for each witness:
  - 1) Name;
  - 2) Employer;
  - 3) Street address of employer; and
  - 4) Brief summary of testimony to be given.
- B. The issuance of subpoenas to compel the attendance of witnesses shall be governed by Rule XV.
- C. Notification of witnesses in case of a continuance or rescheduling of a hearing shall be governed by Rule XII.E.

#### **XV. SUBPOENAS**

- A. The EAB shall have the authority to issue subpoenas in connection with a hearing.
- B. To compel the attendance of a witness, or witnesses, any party to an appeal may file with the EAB a written Request for Issuance of Subpoenas. Each request shall contain for each witness:
  - 1) Name;
  - 2) Street address where the witness may be readily found for service of the subpoena (If the only available address is a route number or box number, the party requesting the subpoena must provide complete and accurate directions for locating the witness.); and

- 3) Brief statement supporting the relevance and materiality of the testimony of the witness to the appeal.
- C.** To compel the production of documentary evidence, any party to an appeal may file with the EAB a written Request for Issuance of Subpoena Duces Tecum. Each request shall specify:
- 1) Name of person who is to produce such documentary evidence;
  - 2) Street address where such person may be readily found for service of the subpoena (If the only available address is a route number or box number, the party requesting the subpoena must provide complete and accurate directions for locating the witness.); and
  - 3) Brief statement supporting the relevancy and materiality of the documentary evidence to the appeal.
- D.** Each request must be filed no later than twenty (20) calendar days prior to the hearing date to ensure timely service. Requests for subpoenas must be served on every other party or his or her attorney. A party shall be given at least ten (10) calendar days to produce documentary evidence pursuant to a subpoena.
- E.** A subpoena may be served by a sheriff, or by his deputy, or by any other person who is not a party and is not less than eighteen (18) years of age, and his return endorsed thereon shall be prima facie proof of service, or the person served may acknowledge service in writing on the subpoena.
- F.** If a subpoena is to be served by the sheriff, a fee of thirty-five dollars (\$35.00) for each person to be subpoenaed shall accompany the request. The fee shall be in the form of a cashier's check, bona fide attorney's check, or money order made payable to the sheriff of the county where the person to be subpoenaed may be found. In the event that additional subpoenas are required at the same address, a fee of one dollar (\$1.00) each shall accompany these requests. The request for subpoenas should specify whether the prepared subpoenas are to be forwarded to the sheriff's office, or returned to the requesting party.

In case of the failure of any person to comply with any subpoena issued by the EAB, the requesting party may invoke the aid of any court of this state of general jurisdiction. The court may thereupon order such person to comply with the requirements of the subpoena. Failure to obey the Order of the court may be punished by the court as contempt thereof.

- G.** Notification of witnesses in case of a continuance or rescheduling of a hearing shall be governed by Rule XII.E.

**XVI. FAILURE TO APPEAR AT HEARING**

- A. If an appealing party, without good cause, fails to appear at the hearing, such failure may be considered as a withdrawal of the appeal, and the presiding Hearing Officer may dismiss the appeal.
- B. If any party fails to appear at the hearing, the EAB may order that such party reimburse the opposing party, or parties, reasonable costs incurred.

**XVII. CONDUCT OF HEARING**

- A. A hearing before the EAB shall be *de novo*, and the appealing party shall be afforded all applicable safeguards of procedural due process.
- B. The EAB shall have the authority to administer oaths and affirmations.
- C. Each party may only be represented by himself or an attorney licensed to practice law in the State of Mississippi.
- D. The responding agency may have a representative, in addition to its attorney, remain in the hearing room during the entire course of the hearing, even though the representative may testify. The appealing party may remain in the hearing room throughout the hearing.
- E. The presiding Hearing Officer may clear the hearing room of witnesses not under examination.
- F. The presiding Hearing Officer shall have the authority to maintain the decorum of the hearing and shall take reasonable steps to do so when necessary, including clearing the hearing room of any person who is disruptive.

**XVIII. EVIDENCE**

- A. Hearings shall be informal, and technical rules of evidence shall be relaxed.
- B. All witnesses shall testify under oath and shall be subject to cross-examination.
- C. The presiding Hearing Officer shall have the authority to admit into the record any evidence which, in his or her judgment, has a reasonable degree of probative value and trustworthiness. The presiding Hearing Officer shall have the authority to exclude evidence which is irrelevant, immaterial, lacking in probative value, untrustworthy, or unduly cumulative.
- D. In the appeal of formal disciplinary action, the presiding Hearing Officer shall hear or receive evidence on only those reasons and allegations contained in the responding agency's final disciplinary notice to the employee of such action.



- C. An appealing party who is a permanent State Service employee and who has by written notice been dismissed or otherwise adversely affected as to his or her compensation or employment status shall be required to furnish evidence that the reasons stated in the notice of such action are not true or are not sufficient grounds for the action taken.

**XXII. ORDER TO BE FILED UPON COMPLETION OF HEARING**

Upon conclusion of the appeal hearing, and after all evidence has been presented, the presiding Hearing Officer, within a reasonable time thereafter, shall prepare and file a written decision and Order therefrom. A copy of such decision and Order shall be sent by the EAB, via Certified U.S. Mail, Return Receipt Requested, to each party or attorney.

**XXIII. COMPLIANCE WITH ORDER**

All parties shall promptly comply with all Orders of the EAB, unless a timely appeal of the decision has been filed by the employer.

**XXIV. RELIEF TO BE GRANTED**

- A. The EAB may reinstate a prevailing party into employment with his or her responding agency and restore all his or her employee rights and benefits including back pay, medical leave, and personal leave. The EAB may also restore retirement benefits provided the integrity of such benefits remains uncompromised in accordance with all applicable laws, policies, rules and regulations.
- B. The EAB may modify an action of a responding agency but may not increase the severity of such action on the appealing party. If the responding agency has acted in accordance with the published policies, rules and regulations of the MSPB, and if the personnel action taken by the responding agency is allowed under said policies, rules and regulations, the EAB shall not alter the action taken by the agency, including, but not limited to, the compensation paid to the employee.

**XXV. BILL OF EXCEPTIONS**

- A. In connection with the hearing of an appeal, any party aggrieved by any matter that does not appear on the record may file a sworn Bill of Exceptions to preserve such matter for appellate review. A Bill of Exceptions must set forth the specific facts upon which prejudice is claimed.
- B. Any opposing party may file a sworn statement that the Bill of Exceptions is not correct. Such statement must set forth the specific facts on which error is claimed.
- C. The presiding Hearing Officer shall review the Bill of Exceptions and the response filed by the opposing party and if the Bill of Exceptions is determined to be true by the Hearing Officer, he shall sign it.
- D. A Bill of Exceptions and any statement in response thereto shall be made a part of the record of the appeal.

- E.** A Bill of Exceptions must be filed no later than five (5) calendar days after the filing date of the final Order in connection with the hearing. A statement in response to a Bill of Exceptions must be filed no later than ten (10) calendar days after the filing date of the Bill of Exceptions.

**XXVI. REVIEW BY THE FULL EAB**

- A.** Any party aggrieved by the final written decision and Order of a presiding Hearing Officer entered on the hearing of an appeal may file a written Request for Review by the Full EAB.
- B.** The request must be filed within fifteen (15) calendar days after the date the final Order is filed.
- C.** Any party may file an original transcription of the recording of the hearing, pursuant to Rule XIX, to be considered by the Full EAB on review. Such transcription must be filed within thirty (30) calendar days after the filing date of the request for review.
- D.** Any party may file a written brief to be considered by the Full EAB on review. Such brief must be filed within thirty (30) calendar days after the filing date of the transcript. These are not response briefs; briefs are to be filed simultaneously by the due date.
- E.** The Full EAB shall base its review on:
  - 1. The pleadings;
  - 2. Any documentary evidence received and filed for record at the hearing by the presiding Hearing Officer;
  - 3. The original transcription of the hearing, if filed; and
  - 4. Briefs of the parties, if filed.
- F.** The Full EAB shall issue a final written decision and Order on the review within a reasonable time after the final date for filing all documents to be considered on review.

**XXVII. JUDICIAL REVIEW**

Any party aggrieved by a final written decision and Order of the EAB may appeal such Order in the manner provided by applicable laws and statutes.

## **XXVIII. PLEADINGS AND BRIEFS**

In connection with the hearing of an appeal, pleadings and briefs which the parties may file shall be limited as follows:

- A.** The appealing party may file, in addition to a Notice of Appeal, a brief on any issues of law in connection with the appeal. The brief must be filed no later than twenty (20) calendar days before the hearing date.
- B.** Any responding party may file an Answer to Notice of Appeal and/or a brief on any issues of law in connection with the appeal. The answer and brief must be filed no later than ten (10) calendar days before the hearing date.

## **XXIX. ASSESSMENT OF FEES AND COSTS**

The EAB shall have the authority to establish reasonable fees and assess reasonable costs of conducting appeals.

## **XXX. COMPUTATION OF TIME**

In computing any period of time prescribed or allowed under these rules, the EAB shall be guided by the Mississippi Rules of Civil Procedure.

## **XXXI. JUDICIAL CONDUCT**

- A.** The Hearing Officers of the EAB shall be guided by and subject to the canons of ethics of judicial conduct of the Mississippi State Bar.
- B.** No Hearing Officer shall be removed from office during his or her term except by a finding of misfeasance, malfeasance, or nonfeasance in office.

## **XXXII. AMENDMENT OF RULES; VALIDITY OF RULES; ENFORCEMENT OF RULES.**

- A.** The MSPB may amend these rules or promulgate new rules.
- B.** If any one or more of these rules is found to be invalid by any court of competent jurisdiction, such finding shall not affect the validity of any other of these rules.
- C.** The EAB shall have the authority, duty and responsibility to abide by and enforce these rules.

**APPENDIX A**  
**NON-GRIEVABLE ISSUES**

The following are non-grievable issues under the State Service grievance procedure:

- A.** issues which are pending or have been concluded by direct appeal through administrative or judicial procedures;
- B.** temporary work assignments which do not exceed ninety calendar days;
- C.** budget and organizational structure, including the number or assignment of employees or positions in any organizational unit;
- D.** duties/performance standards established as criteria for performance review;
- E.** the selection of an individual by the appointing authority, department head, or designee to fill a position through promotion, transfer, demotion, or appointment unless it is alleged that selection is in violation of a written agency policy or of a MSPB rule on filling vacancies;
- F.** internal security practices established by the appointing authority, department head, or designee;
- G.** termination or layoff from duties because of shortage of funds or work, material change in duties or organization, or a merger of agencies;
- H.** any matter which is not within the jurisdiction or control of the appointing authority;
- I.** the content of published agency policy;
- J.** an action by an agency pursuant to federal or State law, directives from the Governor's Office, or court Order;
- K.** establishment and revision of the compensation plan, and the policies, procedures, rules and regulations pertaining thereto;
- L.** position classifications;
- M.** employee benefits.