



RULES OF THE STATE PERSONNEL BOARD

478-1-.27 Appeals and Hearings for Classified Employees

(1) Introduction:

Classified employees may appeal certain employment actions and conditions to the State Personnel Board as outlined in this Rule. In addition to establishing the provisions for appeal, this Rule also sets uniform procedures for hearings conducted by the State Personnel Board (Board) or an Administrative Law Judge of the Office of State Administrative Hearings.

(2) Applicability:

This Rule applies only to employees in the classified service as defined in Rule 478-1-.02 (Terms and Definitions).

(3) Filing an Appeal:

- (a) All appeals to the State Personnel Board shall be filed in writing with the Office of State Administrative Hearings in accordance with procedures established by the Board. Unless a different time period is specifically provided, appeals must be filed and/or postmarked within ten (10) calendar days after:
 - 1. The employee receives written notice of the action or decision, or
 - 2. The effective date of the action or decision, whichever is later.
- (b) Any filing shall be considered timely if postmarked within the time allowed for an appeal but shall not be considered filed until actually received by the Office of State Administrative Hearings.

(4) General Provisions:

- (a) Upon receipt of an appeal the Office of State Administrative Hearings shall assign the appeal to an Administrative Law Judge, unless otherwise directed by the Board.
- (b) The Board may, in its discretion, authorize Administrative Law Judges from the Office of State Administrative Hearings to hold a hearing and otherwise assist in the resolution of appeals. Such Administrative Law Judges shall compile evidence, prepare findings of fact, conclusions of law, issue initial decisions and certify records to the Board for its determination and make investigations of matters under the Board's jurisdiction where the Board deems a review appropriate.

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- (c) Appeal hearings shall be before an Administrative Law Judge unless otherwise specified by the Board.
- (d) Upon the motion of either party or upon its own motion, the Board or the Administrative Law Judge may dismiss any appeal if the appeal is clearly moot, is without merit, was not properly filed with the Office of State Administrative Hearings, or is not within the scope of the Board's authority.
- (e) Waiver of Appeal Rights:
 - 1. An employee who fails to timely respond to a notice of proposed adverse action or a notice of proposed forfeiture of employment shall be deemed to have waived any right of appeal to the Board.
 - 2. An employee who fails to file an appeal in a timely manner shall be deemed to have waived any right of appeal to the Board.
- (f) Timely appeals of actions as identified in this Rule, shall be entitled to a hearing which shall be conducted by an Administrative Law Judge unless the Board, in its discretion, elects to grant a hearing before the Board; provided, with the consent of all parties and approval by the Administrative Law Judge or Board, however, a hearing may be waived and the appeal considered on the written record.
- (g) Review of Initial Decisions:
 - 1. Initial decisions of the Administrative Law Judge shall become the decision of the Board; provided, however, a party adversely affected by a decision regarding dismissal, demotion, suspension without pay, or salary reduction may file an application for review by the Board. Application for review by the Board must be in writing and filed with the Executive Secretary within thirty (30) calendar days of the date the initial decision was issued. Both parties shall have the right to present oral arguments to the Board.
 - 2. The Board on its own motion may issue an order for review within thirty (30) calendar days of the date of the initial decision.
- (h) Decisions of the Board are final and shall not be reconsidered except for specific correction of a manifest error or to comply with an order of a court of competent jurisdiction.

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- (i) No person shall attempt by improper means to influence the proceeding or decisions in an appeal hearing authorized by these rules and regulations.
- (j) Oral arguments or the filing of written memoranda may be required of both parties at the discretion of the Board or an Administrative Law Judge.

(5) Appeals Alleging Unlawful Discrimination:

- (a) Notwithstanding any other provision of these Rules to the contrary, no employee governed by these Rules may file an appeal or otherwise seek a hearing before the State Personnel Board on any charge of unlawful employment discrimination if remedy is available through the Georgia Commission on Equal Opportunity under Georgia law. Such prohibition does not prohibit state agencies from processing internal grievances or otherwise investigating such charges of unlawful discrimination, nor does such prohibition apply to appeals from adverse actions as defined in Rule 478-1-.26 (Adverse Actions for Classified Employees).
- (b) Notwithstanding any other provision of these Rules to the contrary, if an employee charges in an adverse action appeal that the adverse action was based on an unlawfully discriminatory purpose as defined under these Rules, then the employee shall be advised of the right, if available, to file a charge with the Georgia Commission on Equal Opportunity. The employee shall further be advised by the State Personnel Board, an Administrative Law Judge, or other agent that the employee has the option of either proceeding with a State Personnel Board appeal or with a charge before the Georgia Commission on Equal Opportunity.
 1. If the employee elects to proceed with a charge before the Georgia Commission on Equal Opportunity, then the proceeding before the State Personnel Board shall be stayed until the completion of the action before the Georgia Commission on Equal Opportunity or a special master. Following the completion of the action before the Georgia Commission on Equal Opportunity or a special master, if the employee wishes to proceed with the appeal to the State Personnel Board, then the employee must file a request to lift the stay with the Office of State Administrative Hearings. This request shall be filed in writing within ten (10) calendar days following the date of issuance of the Georgia Commission on Equal Opportunity's final decision. This request shall be considered timely if postmarked within the time allowed under this Rule but shall not be considered filed until actually received by the Office of State Administrative Hearings.
 2. A final decision on the merits of the charge by a special master shall preclude the Board or an Administrative Law Judge from reconsidering the same factual issues

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between the parties but shall not preclude the Board from acting on any other issues that have not been resolved by the special master's decision nor preclude the Board from applying the rules and the law to the facts as determined in the special master's decision.

(6) Appeals Alleging Fraud, Waste, or Abuse:

Notwithstanding any other provision of these Rules to the contrary, no employee may file or continue an appeal if the employee is alleging reprisal for having made a complaint or disclosing information relating to fraud, waste, or abuse in state programs or operations, and the employee has instituted, or institutes, proceedings in superior court. The employee shall be notified by the Executive Secretary that any such appeal shall be stayed until the resolution of the court proceedings. The employee has ten (10) calendar days from the resolution of the court proceedings to request the stay be lifted and proceed with the appeal. A final resolution of the court proceedings shall not preclude the Board from acting on any issues that have not been resolved by the court proceedings nor preclude the Board from applying the rules and the law to the facts as determined in the court proceedings.

(7) Protection from Reprisal:

No action against any employee shall be taken or threatened by an Appointing Authority as a reprisal for filing an appeal or disclosing information during the course of an appeal, unless the appeal was filed or the information was disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

(8) Reasons for which Appeals may be Filed:

(a) Unlawful Discrimination Against an Employee:

Unless prohibited by provision (5) of this Rule, an employee who has been unlawfully discriminated against in employment because of race, color, religion, national origin, sex, disability, age, genetic information, political affiliation, protected uniformed service, or other legally protected category, may appeal to the Board as set forth in provision (3) of this Rule; provided, however, that if administrative remedy for the alleged discrimination is available through the departmental complaint resolution procedure as outlined in Rule 478-1-.20 (Employee Complaint Resolution Procedure), the employee shall first seek such remedy and may appeal to the Board only at the conclusion of the procedure.

(b) Dismissal:

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1. A classified employee who is dismissed from a job in which the employee has permanent status may appeal the dismissal to the Board as set forth in provision (3) of this Rule.
2. A classified employee who is dismissed while serving a working test period following a promotion in the same department may appeal the dismissal to the Board as set forth in provision (3) of this Rule. If the appeal is upheld by the Board, relief shall be limited to reinstatement to a position in the job in which the employee last held permanent status, or to a position to which the employee could have been transferred from the position in which the employee last held permanent status.

(c) Suspension:

A classified employee who is suspended without pay may appeal the suspension to the Board as set forth in provision (3) of this Rule.

(d) Demotion:

1. A classified employee who has attained permanent status in the current job who is demoted may appeal the demotion to the Board as set forth in provision (3) of this Rule.
2. A classified employee serving a working test period following a promotion who is demoted to a job lower than the job in which the employee last held permanent status may appeal the demotion to the Board as set forth in provision (3) of this Rule. If the appeal is upheld by the Board, relief shall be limited to reinstatement to a position in the job in which the employee last held permanent status, or to a position to which the employee could have been transferred from the position in which the employee last held permanent status.

(e) Disciplinary Salary Reduction:

A classified employee who is subjected to a disciplinary salary reduction may appeal the reduction to the Board as set forth in provision (3) of this Rule.

(f) Relocation:

Unless prohibited by provision (5) of this Rule, a classified employee who is subjected to involuntary relocation, the costs of which qualify for reimbursement under Office of Planning and Budget regulations, may appeal the relocation to the

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Board as set forth in provision (3) of this Rule; provided, however, that if administrative remedy for the relocation is available through the departmental complaint resolution procedure as outlined in Rule 478-1-.20 (Employee Complaint Resolution Procedure), the employee shall first seek such remedy and may appeal to the Board only at the conclusion of the procedure.

(g) Reduction in Force:

A classified employee who has been laid-off, furloughed, or reduced in salary as a result of a Reduction in Force may appeal to the Board as set forth in provision (3) of this Rule if the Reduction in Force, as implemented by the Appointing Authority, is not in accordance with the plan of reduction as approved by the Department of Administrative Services. Such right of appeal shall not be construed to limit the ability of an Appointing Authority to adjust the number of employees to be retained.

(h) Unjust Coercion or Reprisal:

Unless prohibited by provision (5) of this Rule, a classified employee who is subjected to unjust coercion or reprisal because of participation in an appeal or grievance proceeding authorized by these rules and regulations may appeal for relief to the Board as set forth in provision (3) of this Rule; provided, however, that if administrative remedy for the coercion or reprisal is available through the departmental complaint resolution procedure as outlined in Rule 478-1-.20 (Employee Complaint Resolution Procedure), the employee shall first seek such remedy and may appeal to the Board only at the conclusion of the procedure.

(i) Other Alleged Violations of the Rules of the Board:

Unless prohibited by provision (5) of this Rule, a classified employee who feels that there has been a violation of the Rules or the law which adversely affects the employee's rights may appeal for relief under this provision if the appeal right is not covered elsewhere in these Rules. The appeal must be filed and/or postmarked within ten (10) calendar days after the occurrence of the alleged violation.

(j) Forfeiture of Employment:

Unless prohibited by provision (5) of this Rule, a classified employee who has forfeited employment as provided in Rule 478-1-.28(6) (Voluntary Separations for Classified Employees) may appeal as set forth in provision (3) of this Rule.

(k) Other Voluntary Separations:

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Unless prohibited by provision (5) of this Rule, a classified employee who has been separated under the provisions of Rule 478-1-.28 (Voluntary Separations for Classified Employees), may appeal as set forth in provision (3) of this Rule. The appeal must include any evidence that would support the employee's belief that the separation was improper. A finding that the separation was improper shall permit, but not require, the Administrative Law Judge to reverse the separation.

(9) Notice of the Hearing:

- (a) Within seven (7) days from the filing of an appeal in accordance with this Rule, the Administrative Law Judge or the Board shall designate an appropriate time and place to conduct the hearing and shall so notify all parties in writing; provided, however, any hearing on a dismissal must be held in the county in which the employee was employed unless all parties agree to another location.
- (b) Such notification shall be mailed or served at least ten (10) calendar days in advance of the date set for the hearing.
- (c) Where practical, the hearing will be held within thirty (30) calendar days after receipt of the appeal by the Administrative Law Judge. Any Administrative Law Judge or the Board shall have the authority to postpone or to continue a hearing upon its own motion or upon the motion of either party.

(10) Representation:

Both parties have the opportunity to represent themselves or to be represented by legal counsel. All arrangements for providing legal counsel shall be the responsibility of the party desiring such representation.

(11) Pre-Hearing Conference:

The Administrative Law Judge or the Board may arrange a pre-hearing conference for the purpose of reviewing the matter being appealed and establishing stipulations to expedite the hearing.

(12) Witnesses:

Either party may request the attendance of employees or other persons as witnesses when their testimony will aid in establishing the facts in the case. Employees appearing as witnesses shall be released from duty without loss of pay or time and without effect

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on their service rating. No person shall directly or indirectly use, or threaten to use, any official authority or other influence which would tend to discourage any other person from testifying.

(13) Issuance of Subpoenas:

- (a) The appellant or the agency may request the Board or the Administrative Law Judge to issue subpoenas for witnesses for hearings. The cost of securing the attendance of witnesses, including fees and mileage, shall be computed and assessed in the same manner as prescribed by law in civil cases in the superior court.
- (b) Subpoenas shall be issued without discrimination between public and private parties. When a subpoena is disobeyed, any party may apply to the superior court of the county where the hearing is being held for an order requiring obedience. Failure to comply with such order shall be cause for punishment as for contempt of court.
- (c) Once issued, a subpoena may be quashed or limited by the Board or the Administrative Law Judge upon the motion of the Board, the Administrative Law Judge, or any party, or at the request of any witness if it appears that the subpoena was used primarily as a means of harassment, that the testimony or documents sought are cumulative, that the testimony or documents sought are not relevant or material, that to respond to the subpoena would be unduly burdensome, or that for other good reasons basic fairness dictates that the subpoena not be enforced.

(14) Record of a Hearing Before an Administrative Law Judge:

- (a) A recording shall be made of all hearings; however, such recording will not be transcribed unless the initial decision is appealed to the Board; or a transcript is requested by the Administrative Law Judge or either party to the hearing. If the transcription is made pursuant to a request by either party to the hearing, the cost thereof, as determined by the Office of State Administrative Hearings, will be borne by the party making such request.
- (b) In addition to the recording of the hearing, or a transcription thereof, all documents entered into the record during the hearing shall be made part of the official record of the hearing.

(15) Record of Oral Argument Before the Board:

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The Board may, but is not required to, make a recording of any oral argument before the Board on an appeal from an initial decision.

(16) DOAS Commissioner's Opportunity to be Heard:

At the DOAS Commissioner's discretion or at the invitation of the Administrative Law Judge or the Board, the DOAS Commissioner shall be entitled to be heard and to submit evidence in any appeal in which the interpretation of a State Personnel Board Rule, regulation, policy, or practice is at issue.

(17) Hearing Process:

(a) Role of the Board or Administrative Law Judge:

The State Personnel Board, any member of the Board, or any duly assigned Administrative Law Judge shall have the authority to do the following in connection with any hearing:

1. To administer oaths and affirmations;
2. Sign and issue subpoenas;
3. Rule upon offers of proof;
4. Regulate the course of the hearing;
5. Set the time and place for continued hearings and pre-hearing conference;
6. Fix the time for filing briefs;
7. Dispose of motions to dismiss for lack of the Board's jurisdiction over the subject matter or parties or for any other grounds;
8. Dispose of motions to amend or to intervene;
9. Provide for the taking of testimony by deposition or interrogatory;
10. Reprimand or exclude from the hearing any person for any indecorous or improper conduct committed in the presence of the Board or the administrative law judge; and

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11. To make informal disposition of any case by stipulation, agreed settlement, consent order, or default, unless such disposition is precluded by law.

(b) Attendance at the Hearing:

Any hearing at which the Board or an Administrative Law Judge receives evidence or hears arguments on appeals of disciplinary actions, dismissals, or other purported violations of the rules shall be open to the public. Witnesses may, however, be sequestered at the discretion of the Board or the Administrative Law Judge.

(c) Evidence:

With respect to all hearings before the Board or an Administrative Law Judge,

1. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied to the trial of civil nonjury cases in the superior courts of Georgia shall be followed. Evidence not admissible there under may be admitted if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The Board shall give effect to the rule of privilege recognized by law.
2. Objections to evidentiary offers may be made and shall be noted in the record.
3. When a hearing will be expedited and the interest of the parties will not be prejudiced substantially, any part of the evidence may be received in written form including, but not limited to, the use of depositions or interrogatories.
4. Documentary evidence may be received in the form of copies of excerpts if the original is not readily available. Upon request, and at the discretion of the Administrative Law Judge or Board, parties shall be given an opportunity to compare the copy with the original.

(d) Conduct of Hearings:

In the hearing of an appeal, the proceeding shall be informal but orderly. The following procedures shall prevail:

1. The presiding officer shall open the hearing by explaining the procedure to be followed in the hearing. At the discretion of the Board or Administrative Law Judge, any or all witnesses may be sequestered;

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2. The presiding officer shall read or cause to be read the charges and specifications as filed. The presiding officer shall then read or cause to be read the letter of appeal. By agreement these documents may be inserted in the record without reading;
3. The facts not in dispute may be stipulated;
4. Each party shall be given an opportunity to make a brief opening statement identifying the issues and indicating what is to be proven;
5. All witnesses shall testify under oath or affirmation;
6. Each party may conduct such cross examination as shall be required for a full and true disclosure of the facts. In addition, the Administrative Law Judge may examine the witnesses;
7. Official notice may be taken of judicially recognizable facts. In addition, official notice may be taken of technical facts within the specialized knowledge of the Board or the Administrative Law Judge. Parties shall be notified either before or during the hearing, by reference in preliminary reports or otherwise, of the material officially noted, including any staff memoranda or data, and they shall be afforded an opportunity to contest the materials so noticed;
8. The Board's or Administrative Law Judge's experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence;
9. Before closing the hearing, the presiding officer may allow both parties the opportunity to make brief oral or written closing statements;
10. With respect to hearings at which the Board did not preside at the reception of the evidence, the Administrative Law Judge who presided shall issue an initial decision within thirty (30) calendar days from the close of the evidence or, if necessary, a longer period of time as ordered by the Board or Administrative Law Judge. The initial decision may modify the action of the Appointing Authority but may not increase the severity of such action on the employee. The initial decision shall be transmitted to the Board with copies mailed to the parties or their representatives;
11. A party adversely affected by a decision of an Administrative Law Judge regarding dismissal, demotion, suspension without pay, or salary reduction may, within thirty (30) calendar days from the date the initial decision was issued,

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apply to the Board for review of the decision. Any application shall be considered timely if postmarked or received within the time allowed. In the absence of an application for review, or an order by the Board within such time for review on its own motion, the initial decision shall, without further proceedings or notice, become the final decision of the Board and any right of additional appeals shall be extinguished.

(e) Board Review of Administrative Law Judge's Initial Decision:

1. Upon receipt of an application for Board review, or on the Board's own motion, the entire record shall be transmitted to the Board for review and final decision.
2. Both parties in an appeal to the Board shall have the right to present oral arguments to the Board. This shall not preclude the Board from requesting argument, either oral or written, upon request of any member of the Board.
3. On review of the entire record, the Board shall have all the powers it would have had in presiding at the reception of the evidence, including the review of any motions granted or denied by the Administrative Law Judge and including the review of any action taken by the Administrative Law Judge. In its discretion, the Board may take additional testimony or evidence or remand the matter to the Office of State Administrative Hearings for such purpose.
4. Any hearing to receive additional evidence or hear oral argument shall be open to the public. Deliberations by the Board, which may include a review of the record, may be held in closed session.

(18) Decision of the Board:

- (a) Upon receipt of an application for review of an Administrative Law Judge's initial decision regarding a dismissal, demotion, suspension without pay, or salary reduction, the Board shall normally render its decision at the first regular monthly meeting after the entire record is made available to it. When an appeal is heard by the Board, it may render its decision immediately thereafter, or at the regular meeting held in the month following the month in which the appeal was heard, or at the first regular meeting after the complete certified record including transcript is made available to it, unless otherwise extended.
- (b) As a part of the initial decision or final decision of the Board or order subsequent to any hearing, the Administrative Law Judge or the Board shall include findings of fact

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and conclusions of law, separately stated, and the effective date of the decision or order.

1. The initial decision of the Administrative Law Judge shall include the reasons for the decision.
 2. The Board, when requested to review the record of an appeal, shall make its own findings of fact and conclusions of law which may be by adopting the findings, conclusions, and decision of the Administrative Law Judge.
 3. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.
 4. Copies of the decision or order shall be mailed to all parties of record by the Executive Secretary.
- (c) The decision of the Board as to whether an adverse action was in accordance with the Rules shall be binding upon both parties. The Board's decision may modify the action of the Appointing Authority but may not increase the severity of such action on the employee. Such Appointing Authority shall promptly comply with such order as may be issued as a result of the appeal.
- (d) If the decision of the Board is in favor of the appellant on appeals of dismissal, demotion, suspension without pay, or disciplinary salary reduction, the employee shall be reinstated in accordance with the decision of the Board to the position from which the employee was removed except as set forth in provisions (8)(b)2 and (8)(d)2 of this Rule.
1. The effective date for the reinstatement shall be the date immediately following the effective date of the appealed action as though there had been no break in service, unless otherwise specified in the order.
 2. The employee shall be entitled to the same salary in the position or salary which would have automatically been received had the employee remained in actual service.
 3. The employee shall receive payment as though there had been no break in service, minus any amount earned by or paid to the employee from other employment and wage substitutes (including but not limited to unemployment compensation) during the period off the job and minus any amount paid for annual leave. The employee's sick and annual leave shall be restored in the

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same amount as existed at the time of the appealed action, plus sick and annual leave that would have been earned for the period as though the employee had actually been in service. However, any period of postponement or continuance of the hearing for the convenience of the appellant will be excluded from any payments of benefits due, and this period of time will be considered as though the appellant had been on leave without pay.

4. Prior to any payment, the employee shall be required to certify under oath the amount of income from other employment and wage substitutes during the period off the job.
- (e) In any case in which an appeal is disposed of by stipulation, agreed settlement, or consent order, any compensation and leave due the employee shall be calculated in accordance with provision (18)(d), above.

(19) Judicial Review:

A decision of the Board, or an Administrative Law Judge's Final Decision not subject to review by the Board, shall not limit the rights of either party to judicial review, and such decision shall be stayed by the filing of a petition for review. Any party, including the State or any state board, bureau, commission, or department, who has exhausted all administrative remedies available before the Board and who is aggrieved by a final decision or order of the Board on any hearing may seek judicial review of the final decision or order of the Board in the superior court of the county of the place of employment of the employee.

Authority:

O.C.G.A. Secs. 45-20-3, 45-20-3.1, and 45-20-4 (duties and functions of the State Personnel Board and Department of Administrative Services related to the Rules of the State Personnel Board),
O.C.G.A. Secs. 45-20-8 and 45-20-9 (Classified service appeals)