

Appeals

Overview

The following table identifies the topics covered in this section.

Topic	See Page
Merit System Appeals	14.1
Non-Statutory Appeals	14.6
Statutory Appeals	14.7
Resources	14.9

Merit System Appeals

Policy It is the policy of the DGS that merit system (administrative) appeals are immediately investigated and resolved at the lowest possible level.

Definition An appeal means any written request for relief or review pertaining to the following:

Evidentiary Appeals

- Adverse Action/Disciplinary Action
- Lesser Adverse Action
- Rejection During Probationary Period
- Medical Termination/Demotion/Transfer
- Constructive Medical Termination
- Nonpunitive Termination/Demotion/Transfer (License Revocation/Restriction)
- Termination of Limited-Term/Seasonal/Temporary Authorization Appointment (Liberty Interest/Name-Clearing Hearing)
- Termination of Limited Examination and Appointment Program (LEAP) Appointment
- Termination of Career Executive Assignment (CEA) Appointment
- Termination/Automatic Resignation of Permanent Intermittent Employee

Merit Appeals

- Discrimination Complaint
- Denial of Reasonable Accommodation
- Whistleblower Retaliation Complaint
- Request to File Charges
- Examination Appeal
- Withhold from Certification
- Voided Appointment
- Medical/Psychological Disqualification; Failure of Pre-employment Drug Test
- Merit Issue Complaint (Denied Merit Salary Adjustment, Range Change)
- Dismissed Employee's Request to Take Civil Service Examination
- Out-of-Class Claim (Examination)

Continued on next page 14.1

Merit System Appeals, Continued

Common terms

The following are common terms used in the merit system appeal process:

- **Administrative Law Judge** means a person employed by the State Personnel Board (SPB) to conduct evidentiary hearings.
- **Adverse Action** means an action taken by an appointing power to discipline an employee and includes formal reprimand, suspension, reduction-in-salary, demotion and dismissal.
- **Appeals division** means the appeals division of the SPB.
- **Appellant** means the person, or organization filing any appeal.
- **Hearing office** means the hearing office of the SPB.
- **Notice** means a written notice indicating the taking of an adverse action or rejection during probationary period.
- **Party or parties** means the appellant and the respondent and/or their representatives.
- **Rejection during probationary period or rejection** means an action to remove an employee from a probationary appointment.
- **Respondent** means the person or state agency from whose action or decision the appellant is seeking relief.

Before you file

Before filing a merit appeal with the SPB, the employee:

Step	Action								
1	<p>Meets with his/her supervisor to discuss the disputed matter.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">If</th> <th style="text-align: center;">then</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;">Unresolved at informal level</td> <td style="padding: 5px;">File a formal appeal, in writing to: <ul style="list-style-type: none"> • supervisor </td> </tr> <tr> <td style="padding: 5px;">Unresolved at supervisor level</td> <td style="padding: 5px;">Submit appeal, including supervisors response to: <ul style="list-style-type: none"> • Classification and Pay (C&P) Analyst </td> </tr> <tr> <td style="padding: 5px;">Unresolved at C&P Analyst level</td> <td style="padding: 5px;"> <ul style="list-style-type: none"> • Submit appeal to SPB </td> </tr> </tbody> </table>	If	then	Unresolved at informal level	File a formal appeal, in writing to: <ul style="list-style-type: none"> • supervisor 	Unresolved at supervisor level	Submit appeal, including supervisors response to: <ul style="list-style-type: none"> • Classification and Pay (C&P) Analyst 	Unresolved at C&P Analyst level	<ul style="list-style-type: none"> • Submit appeal to SPB
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Unresolved at C&P Analyst level	<ul style="list-style-type: none"> • Submit appeal to SPB 								

Continued on next page 14.2

Merit System Appeals, Continued

When to file Listed below is the time frame to file for each merit appeal:

Appeal Type	Time Frame
Discrimination/Retaliation Complaint	30 days from department response
Denial of Reasonable Accommodation	30 days from department response
Whistleblower Retaliation Complaint	Within 12 months of latest reprisal/retaliation
Request to File Charges	Within 12 months of events giving rise to request
Examination Appeal (Individual, Group, CEA, LEAP)	<ul style="list-style-type: none"> • 30 days from notification of qualification appraisal interview results • 60 days from notification of written test results
Withhold from Certification	<ul style="list-style-type: none"> • 30 days from receipt of notice that name withheld
Voided Appointment	<ul style="list-style-type: none"> • 30 days from notification of voided appointment
Medical/Psychological Disqualification; Failure of Pre-employment Drug Test	<ul style="list-style-type: none"> • 30 days from receipt of notification of disqualification, restriction or failure of drug test
Merit Issue Complaint	<ul style="list-style-type: none"> • 30 days after department denies, or • the 90 days expires without department decision
Dismissed Employee's Request to Take Civil Service Examination	<ul style="list-style-type: none"> • 30 days from SPB notification
Out-of-Class (Examination)	<ul style="list-style-type: none"> • 30 days from receipt of notice of denial

Continued on next page 14.3

Merit System Appeals, Continued

SPB filing

Each appeal to SPB shall be in writing and shall:

- clearly identify the facts that form the basis for appeal
 - identify all respondents known to the appellant
 - be filed with SPB within thirty days after the appellant has been served with the notice, report, or document from which the appeal is taken
-

SPB action

Depending on the type of appeal, an appeal filed with the SPB may be sent to:

- an evidentiary hearing before an ALJ,
 - a staff-hearing officer for a less formal non-evidentiary hearing, or
 - an investigation by SPB staff with or without a hearing.
-

SPB notification

The SPB Appeals Division mails or serves a copy of the appeal to or on the respondent.

Who can attend?

SPB hearings are open to the public. An employee may be represented by legal counsel or any other person or organization, or may represent him/herself.

Remedies

The SPB has broad remedial authority when it grants an appeal. Depending on the type of appeal, remedies may include the following:

- reinstatement,
- back salary, benefits and interest at seven percent (7%),
- change in work assignment and/or location, or
- assignment of an alternative or passing score on an examination.

The SPB may also grant compensatory damages in discrimination appeals. At present, there is no specific authority for the SPB to award attorneys' fees or civil sanctions for contempt.

Continued on next page 14.4

Merit System Appeals, Continued

**Expungement
of adverse
action notice
from OPF**

Government Code (GC) Section 19589 requires appointing powers to:

- remove Letters of Reprimand from an employees official personnel folder (OPF) within three (3) years of the effective date of the reprimand; however,
- the appointing power may maintain a copy of the Letter of Reprimand in a separate file, such as a legal file or a supervisory file, and cite said Letter of Reprimand in subsequent disciplinary actions for purposes of establishing notice and/or progressive discipline.

There is no other statutory or regulatory authority governing the removal of notices of adverse action from an employee's OPF.

The retention/expungement of such records may be addressed in a memorandum of understanding (MOU). Refer to the applicable MOU regarding retention/expungement procedures.

Non-Merit Statutory Appeals

Legal authority

The Department of Personnel Administration (DPA) has statutory authority to hold hearings and/or conduct investigations of the following:

- Requests for reinstatement after automatic resignation (AWOLs)
 - Requests for reinstatement after AWOL of permanent-intermittent (PI) employees
 - Appeals from layoff
 - Appeals from demotion in lieu of layoff
 - Protests of geographic and non-geographic (involuntary) transfers
 - Petitions to set aside resignations
 - Appeals from denial of merit salary adjustment (MSA)
 - Appeals of performance appraisals
-

When to file

Appeals must be in writing and must:

- State the basis and the relief requested
- Be filed within 30 days after an appellant has been served, or if no notice is served,
- Be filed within 30 days after the event generating the appeal

Exception: A request for reinstatement after AWOL resignation must be filed within 15 days of the service of the notice of separation.

DPA time frame

Every appeal must be brought to hearing within three years unless the parties agree otherwise in writing and submit a copy of that writing to DPA.

However, some matters are not entitled to a full evidentiary hearing and are handled by investigation. Refer to the applicable Memorandum of Understanding (MOU) for specific matters handled in this manner.

DPA action

The DPA issues:

- A Notice of Time and Place of Hearing, and may, if requested,
 - Subpoenas to secure witnesses for the hearing
 - Decisions following the hearing
-

Statutory Appeals

Introduction The DPA is responsible for handling the non-merit provisions of the State's personnel system. The Statutory Appeals Unit at the DPA:

- Processes appeals
- Holds hearings
- Issues proposed decisions on statutory appeals
- Processes requests for reconsideration
- Processes transcripts
- Processes administrative records
- Processes out-of-class claims appeals

The DPA's Legal Division renders final decision on non-merit statutory appeals by employees, including, but not limited to:

- Requests for reinstatement after automatic resignation (AWOL)
 - Requests for reinstatement after AWOL of permanent-intermittent (PI) employees
 - Appeals from layoff
 - Appeals from demotion in lieu of layoff
 - Protests of involuntary geographic and non-geographic transfer
 - Petitions to set aside resignation
 - Appeals from denial of merit salary adjustment (MSA)
 - Appeals of performance appraisal
 - Appeals from denial of sick leave
-

Filing an appeal

When an employee's rights are affected by a particular contract, actions otherwise appealable under the civil service statutes may be only arbitrable or grievable for members of the particular bargaining unit. In those situations affected employees are only entitled to the remedy set forth in the contract.

Appeals can be filed by:

- Facsimile (fax)
 - Mail
 - Personal service
-

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Statutory Appeals, Continued

Filing an appeal
(continued)

All appeals must be in writing and:

- Shall state the facts upon which it is based
 - The relief requested
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Time frame

Refer to the Statutory Appeals Manual for the specific time frame to file for the types of appeals discussed above.

Resources

Resources The following table depicts the various resources regarding appeals.

Resource	Section
Executive Orders	B-54-79
Law and Regulation http://leginfo.legislature.ca.gov/faces/codes.xhtml;jsessionid=ec740fb92d7f258ccc38ebd5c0c9 http://weblinks.westlaw.com/toc/default.aspx?Abbr=ca%2Dadc&Action=ExpandTree&AP=I1CF57861D48D11DEBC02831C6D6C108E&ItemKey=I1CF57861D48D11DEBC02831C6D6C108E&RP=%2Ftoc%2Fdefault%2Ewl&Service=TOC&RS=WEBL13.01&VR=2.0&SPa=CCR-1000&pbcr=DA010192&fragment#I1CF57861D48D11DEBC02831C6D6C108E	Code of Civil Procedure: 2015.5 Penal Code: 289.6, 6129 PERB: 21023.5, 21028, 21029 GC: 995.3, 8546.8, 8547-.11, 12101, 12940, 18670-18683, 18900, 18930.5, 18935, 18952, 19058-19101, 19170-19180, 19230-19237, 19240-19244, 19253.5, 19257, 19267.5, 19570-19594 19683-.5, 19700-19706, 19815.4, 19816.2, 19818.16, 19832-19837, 19841, 19842.5, 19859-19868.3, 19889-.4, 19992.4, 19992.8-.13, 19994-.4, 19996.1-.2, 19996.21 SPB Rules: 8-10, 51-54.2, 172-173, 190-213.6, 265, 266-.3, 321-327, 446, 448, 547-.2, 547.50-.57, 548-.155 DPA Rules: 599.684, 599.714.1, 599.745-.751, 599.795, 599.798, 599.799.1-.2, 599.810, 599.825-.826, 599.828, 588.840-.850, 599.845, 599.859, 599.990-.995
Memorandum of Understanding (MOU) http://www.calhr.ca.gov/state-hr-professionals/Pages/bargaining-contracts.aspx	Refer to applicable MOU
Responsible Agency and Program	SPB, DPA
SPB/DPA Policy Memos http://www.calhr.ca.gov/state-hr-professionals/Pages/policy-memos.aspx	PML: 2001-031, 96-032, 98-020 SPB pinkies: 8-29-02, 5-17-02, 12-20-02
Other:	
Non-Merit Statutory Appeals Hearing Procedures Statutory Appeals Manual Administrative Appeals Manual	http://www.calhr.ca.gov/state-hr-professionals/pages/appeals-and-grievances.aspx