

U.S. Department of Energy
Washington, D.C.

ORDER

DOE 3771.1

Approved: 0702-81

This directive was reviewed and certified as current and necessary by (Enter Name), (Enter Title) Director, Office of Management, Budget and Evaluation/Chief Financial Officer, XX-XX-XXXX.

SUBJECT: GRIEVANCE POLICY AND PROCEDURES

1. **PURPOSE.** To provide general policy guidance and instructions and state responsibilities for establishing and administering the grievance system of the Department of Energy (DOE). This Order is in accordance with part 771, title 5, Code of Federal Regulations, which sets forth the regulations under which each agency shall establish an administrative grievance system.
2. **CANCELLATION.** Interim Management Directive 3771, GRIEVANCE POLICY AND PROCEDURES, of 2-17-78, and DOE N 3771.1, GRIEVANCE PROCEDURE FOR RESOLVING MERIT PAY COVERAGE DISPUTES, of 10-15-80.
3. **COVERAGE AND EXCLUSIONS.**
 - a. **Coverage.**
 - (1) This Order covers all employees except those excluded in paragraphs 3b(1)(a) through (c).
 - (2) These procedures are intended to cover all matters of employee concern or dissatisfaction relating to employment that is subject to the control of management, and for which the employee seeks personal relief; including matters which the employee alleges have resulted in coercion, reprisal, or retaliation, and for which there is no other established procedure for appeal or complaint, and which is not otherwise excluded in subparagraph 3b.
 - (3) Only employees at the 13 through 15 grade level are covered by Chapter III.
 - b. **Exclusions.**
 - (1) The following individuals are excluded from coverage of this Order:
 - (a) Employees excluded by part 771, title 5, Code of Federal Regulations.
 - (b) Employees who are members of a bargaining unit represented by a union which is recognized by the DOE and who are covered by a negotiated grievance procedure.
 - (c) Applicants for employment with DOE.

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Office of Personnel

- (2) This Order excludes matters excluded by Part 771, Title 5, Code of Federal Regulations. Attachment 1 contains a detailed list of these exclusions.

4. DEFINITIONS.

- a. Deciding Official. Except in the case of the Secretary, an official at a higher administrative level than any other individual directly involved in the matter being grieved and who has been delegated the authority to make final decisions on formal grievances. The deciding official is normally the supervisor or manager immediately above the supervisor to whom the informal grievance was submitted, unless that individual was directly involved in the action being grieved. In the latter event, the deciding official shall be the next higher level supervisor in the management chain who was not directly involved in the action being grieved. Only the Secretary may be involved in a grievance, be the supervisor with whom an informal grievance is filed, and be the deciding official.
- b. Days. Calendar days.
- c. Employees. Includes former DOE employees who meet the time limits or presenting a grievance and for whom a remedy can be granted. In Chapter 3, this definition means employees who are in grades GS-13 through 15 only.
- d. Factfinding.
- (1) An inquiry suitable to ascertain the relevant circumstances surrounding a grievance and to provide the basis for a written report which contains appropriate recommendations on the matter being examined and reasons for the recommendations.
- (2) In the event of a merit pay grievance, the report shall contain information, facts, and supporting documents. for the original determination and the recommended decision shall be limited to Include or exclude the employee's position under the merit pay system. The inquiry shall include, but not necessarily be limited to, consideration of:
- (a) The point of view of the supervisor, the employee, and a representative from the servicing personnel office.
- (b) Applicable laws, regulations, case decisions, and Departmental policies.
- e. Formal Grievance. A request made in writing by an employee, a former employee, or a group of employees acting as individuals, for personal relief in a matter of concern or dissatisfaction relating to the employment of the employee(s) which is subject to the control of DOE management.

- f. Grievance File. A separate file which contains all documents related to the grievance (see Chapter I, paragraph 8).
- g. Merit Pay Coverage Determination Grievance. A written request by an employee that specifically disputes the merit pay coverage determination of the position occupied by the employee at the time the determination was originally made and that requests personal relief.
- h. Personal Relief. A specific remedy within the control of management directly benefiting the grievant. Limited under Chapter III to a specific request for inclusion or exclusion of the position occupied by the grievant under the merit pay system. -Personal relief may not include a request for disciplinary or other action affecting another employee.

5. POLICY.

- a. The procedures set forth in this Order shall be administered in a manner which will ensure the orderly, expeditious, and equitable handling of grievances.
- b. Employees using these procedures or acting as representatives under these procedures shall not be subject to restraint, interference, coercion, discrimination, or reprisal by any supervisor or management official.

6. RESPONSIBILITIES AND AUTHORITIES.

- a. Heads of Headquarters Elements and Heads of Field Organizations with Personnel Authority.
 - (1) Assure that employees under their jurisdiction are informed of the provisions of this Order.
 - (2) Develop necessary procedures for carrying out the policies contained in this Order.
 - (3) Designate deciding officials to receive and attempt to adjust formal grievances, and supervisory officials to render final decisions on formal grievances referred by the Director of Personnel.
- b. Assistant Secretary, Management and Administration. Assures that the overall grievance system of the DOE is administered in accordance with the regulations and guidelines of the Office of Personnel Management.
- c. Director of Personnel.
 - (1) Makes recommendations, comments and suggestions to the appropriate supervisory official when the deciding official does not accept the recommendations contained in the report of factfinding.
 - (2) Makes the final decision on grievances concerning merit pay coverage determinations when the grievant is not satisfied with the initial decision of the servicing personnel officer.

- (3) Renders a final decision on the appropriateness of a rejection or cancellation of a grievance by the deciding official and may direct that a decision be rendered on the merits of the grievance.

d. Deciding Officials.

- (1) Receive and attempt to adjust formal grievances.
- (2) If the formal grievance is not adjusted to the employee's satisfaction, request the servicing personnel office to obtain a person(s) to carry out factfinding.
- (3) Make decisions regarding the disallowance of a representative under Chapter II, "Administrative Grievance Procedure."
- (4) Issue final decisions on formal grievances when all the recommendations contained in the report of factfinding are accepted.

e. Supervisors.

- (1) Promptly discuss matters of concern with employees under their immediate supervision when a grievance is presented informally, and try to clarify misunderstandings and make reasonable adjustments to resolve the matter.
- (2) Promptly obtain answers from an appropriate source when an employee under their supervision presents an informal grievance that is not within the supervisor's authority to resolve.
- (3) Review and comment on grievances concerning merit pay coverage determinations.
- (4) Make decisions regarding the disallowance of a representative under Chapter III, "Grievance Procedure for Resolving Merit Pay Coverage Disputes."

f. Personnel Officers.

- (1) Provide advice to management, individual employees, employee representatives, and other interested parties as to the application and details of the grievance procedures.
- (2) Provides technical advice on the processing of all formal grievances and grievances concerning merit pay coverage determination.
- (3) Issue initial decisions on grievances concerning merit pay coverage determinations.

- (4) Maintain necessary records, arrange for factfinding, follow up at all stages to assure timely processing, and prepare necessary reports.



William S. Heffelfinger
Assistant Secretary
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CHAPTER I

GENERAL

1. SUPPLEMENTS AND REDELEGATIONS. This Order shall not be supplemented without prior approval from the Director of Personnel. This does not apply to redelegating authority.
2. REPRESENTATION.
 - a. An employee has the right to be accompanied, represented, and advised by a representative of his or her choice at any stage of the proceeding except that this right does not accord the grievant or the representative the right to appear personally before the Director of Personnel. The designation of a representative must be in writing and provided to the supervisor or deciding official. If the grievant chooses another employee of the DOE as a representative and that person is willing to serve, the representative's supervisor, acting independently or in concert with the grievant's supervisor, may disallow the employee's choice of a representative in a grievance on the basis of:
 - (1) Priority needs of the DOE mission. For instance, it is not intended that any one employee serve as a representative when doing so repeatedly would interfere with the priority needs of the DOE mission. Should this condition arise, the employee concerned will be advised by the supervisor to curtail representation activities.
 - (2) Unreasonable cost to the DOE.
 - (3) Conflict of interest or conflict of position.
 - b. The grievant may challenge a decision to disallow the choice of representative to the deciding official and obtain a decision before proceeding with the grievance. If the grievance is presented under the procedures in Chapter II, the challenge will be submitted to the servicing personnel officer who will "forward the challenge to the representative's supervisor at the next higher level in the management chain who was not involved in the original decision to disallow the representative. The deciding official or supervisor will make a decision regarding the disallowance of a representative no later than 10 days after receipt of the challenge.
 - c. The DOE will not designate a representative for a grievant, nor will the DOE require any employee or individual to serve as a representative of another. If a grievant requests assistance in obtaining representation, the servicing personnel office will make available to the grievant information concerning sources of assistance. All arrangements for a representative must be made by the grievant.

- d. In the event the grievant wishes to change representatives, the procedures described in subparagraphs 2a through 2c apply.
3. COMMUNICATION. An employee has a right to communicate with the servicing personnel office or any DOE counselor at any stage of the grievance procedure.
4. USE OF OFFICIAL TIME.
 - a. An employee and the employee's representative (if employed by the DOE) are entitled to a reasonable amount of official time to present a grievance; they are not entitled to official time to, prepare the grievance except to the extent necessary to obtain information and interview witnesses not otherwise available during nonwork hours. "Presenting" includes discussions with supervisors and attendance at any hearing, inquiry, or meeting in the formal stage.
 - b. When the deciding official hearing the formal grievance deems it necessary to the presentation of the grievance, the employee and the representative (if employed by the DOE) shall be permitted official travel, and travel time shall not be charged to leave. In no case will the employee or the representative be granted official time or be reimbursed for expenses associated with the investigation or presentation of a grievance, except as provided in subparagraphs 4a and b.
5. OBLIGATION OF THE EMPLOYEE. An employee, in exercising the entitlement to present a grievance under this Order, shall:
 - a. Comply with appropriate time limits established in this Order;
 - b. Furnish sufficient detail to clearly identify the matter being grieved; and
 - c. Specify the personal relief being requested.
6. GRIEVANCE FOLLOWUP.
 - a. Servicing personnel offices and supervisors shall followup on grievances to assure that the relief granted the employee and any recommendations contained in the report of findings and recommendations accepted by the deciding official have been implemented.
 - b. In all cases where a decision is favorable to an employee, the specific action to be taken shall be set forth in the written decision. The action directed shall be taken promptly, with followup in accordance with the above paragraph.
7. CANCELLATION OF GRIEVANCE. A grievance shall be cancelled:
 - a. At the employee's written request.

- b. Upon termination of the employee's employment with the DOE, unless the personal relief sought by the employee may be granted after termination of employment. When an employee is reassigned from one DOE organization to another DOE organization and the personal relief sought by the employee may be granted after reassignment, the grievance will continue to be processed in the same manner as though the employee had remained on the rolls of the organization from which reassigned. Any expenses required for official travel for the grievant and the grievant's representative will be paid by the grievant's former organization.
- c. Due to lack of timely action by an employee. Management has a responsibility to exercise due diligence in assuring that the employee understands that unless the employee furnishes the required information and duly proceeds with advancement of the grievance, the grievance will be cancelled, and the employee will be so notified in writing.
- d. Upon death of an employee unless the grievance involves the question of pay.

8. GRIEVANCE FILE.

- a. A grievance file shall be established and maintained by the servicing personnel office for each grievance that becomes formal and for each grievance filed under Chapter III. The following items, as applicable, shall be included in the grievance file:
 - (1) The written formal grievance;
 - (2) A written summary of action and results during the informal procedure;
 - (3) Copies of the advance' notice, replies, and the final decision notice where a suspension of 14 days or less is involved;
 - (4) Copies of letters of reprimand or warning where such matters are at issue;
 - (5) Copies of personnel action documents associated with the grievance;
 - (6) Any statements of witnesses and statements made by the parties to the grievance;
 - (7) The final grievance decision;
 - (8) All other documents pertinent to the case.
- b. Grievance records will be maintained in individual grievance folders. Access to these records will be on a need-to-know basis and in accordance with the provision of Federal Personnel Manual Chapter 294, as supplemented. Information which cannot be disclosed to grievants or their

representatives cannot be included in the files. Information which has been gained through factfinding procedures which cannot be disclosed cannot be used in adjudicating grievances.

- c. Grievance files will be disposed of in accordance with DOE 1324.2, RECORDS DISPOSITION.

CHAPTER II

ADMINISTRATIVE GRIEVANCE PROCEDURE

1. SUMMARY. The employee initiates an informal grievance by first discussing the matter with the immediate supervisor. If the matter is not resolved in the informal stage, the employee may submit a formal grievance to the servicing personnel office which will either accept, reject or return the grievance on behalf of the deciding official. If the grievance is accepted, it will be forwarded to the deciding official. If personal relief is not granted, the deciding official will initiate factfinding procedures. The deciding official will then either accept the recommendations of the factfinder or determine that the recommendations of the factfinder are unacceptable and forward the case to the servicing personnel office to be submitted to the Director of Personnel. The deciding official may also reconsider at this point and decide to grant the personal relief originally requested, so long as it is consistent with policy, regulations, or other administrative or statutory requirement. The Director of Personnel will make recommendations, comments, or suggestions to the appropriate higher level supervisor who will make the final decision concerning the grievance and forward the decision to the grievant and a copy to the appropriate servicing personnel office. The procedures contained herein are applicable only to current employees. Former employees, who meet the time limits, shall submit a grievance directly to the Director of Personnel who will, upon receipt of the grievance, decide appropriate processing.
2. TIME LIMITATIONS. An employee may present a grievance concerning a continuing practice or condition at any time. A grievance concerning a particular act or occurrence must be presented within 15 days of the date of that act or occurrence or within 15 days of the date the employee became aware of the act or occurrence. The following is a schedule designed to permit reasonable time limits for the processing of a grievance.
 - a. Completion of the Informal Procedure--within 21 days from the date the grievance is first brought to the attention of the immediate supervisor.
 - b. Filing of the Formal Grievance--within 7 days of completion of the informal procedure, or not later than 28 days after initiation of the informal procedure if no reply has been received in the informal procedure.
 - c. Adjustment or Referral of Formal Grievance to Servicing Personnel Office for Assignment of Factfinder--7 days.
 - d. Completion of Factfinding Procedures and Submission of the Report of Findings and Recommendations--45 days.
 - e. Issuance of the Decision by Deciding Official After Receipt of Report of Findings and Recommendations--7 days.

- f. Issuance of Decision by Appropriate Higher Level Official Deciding Official Does Not Accept Report of Findings and Recommendations--
5 days after receipt.

3. INFORMAL GRIEVANCE PROCEDURE. An employee shall complete the informal procedure before the Department may accept a grievance under the formal procedure, except as noted under subparagraph 3e. The following informal procedure is required:
- a. A grievance shall first be discussed with an employee's immediate supervisor. The employee shall specify that an informal grievance is being presented.
 - b. When the grievance involves a decision or matter under the cognizance of an official outside the employee's normal supervisory line, or not within the immediate supervisor's authority, the informal procedure will be administered by the employee's immediate supervisor who will confer with the appropriate official before providing the employee a response to the grievance.
 - c. The supervisor to whom a grievance has been presented for informal adjustment will attempt to resolve it as expeditiously as possible, seeking the advice and assistance of others where necessary, and will give the employee a written decision on the matter not later than 21 days after the date it was received. If the adjustment sought is not granted, the employee will be informed in writing of the reason and the right to request consideration under the formal procedure.
 - d. The immediate supervisor may not refuse to consider a grievance in the informal stage for any reason. If the grievance is not timely or consists of matters not covered under the grievance system, the employee shall be so advised, but the employee must be allowed to invoke under the informal procedure if desired, that is, the employee must be allowed to set forth his or her concern or dissatisfaction to the immediate supervisor who must listen and respond within the context of the grievance procedure.
 - e. Within 7 days of receipt of a letter of decision on a suspension of 14 calendar days or less or a letter-of reprimand, an employee may present a grievance directly under the formal procedure without using the informal procedure. The appropriate time limitation in paragraph 2 applies.

4. FORMAL PROCEDURE.

a. Submission of Grievance.

- (1) When an employee receives a decision under the informal procedure, or when the time limit for management to respond has expired without a

decision, the employee may, within 7 days thereafter, submit the grievance to his or her servicing personnel office for formal consideration.

- (2) The servicing personnel office will forward grievances it accepts to the appropriate deciding official with delegated authority to decide grievances. The grievance shall be in writing, signed and dated by the employee, and contain sufficient data to identify and clarify the basis of the grievance. It must also explain the efforts made to resolve the grievance informally, and specify the relief sought by the employee. If the employee has a representative, the representative's name, address, and phone number must also be included.
- b. Acceptance or Rejection of a Grievance. Promptly on receipt of a grievance filed under the formal procedure, the servicing personnel office will request the supervisor to submit a written summary of the matter grieved and the action taken or the results under the informal procedure and, acting for the appropriate deciding official, shall take one of the following actions:
- (1) Reject the grievance if it was not filed within the time limits specified for filing under the informal or formal procedures; consists wholly of a matter or matters excluded from coverage of the grievance system; or if there is no personal relief to grant the employee. The notice of rejection shall be in writing, give reasons for the rejection, and inform the grievant of the right to request the Director of Personnel to review the decision to reject the grievance (see paragraph 5). Where it is determined that a grievance is untimely, the formal grievance should not be accepted unless the employee furnishes, and the deciding official approves, a written explanation showing that the delay was caused by uncontrollable circumstances.
 - (2) If the employee has not completed the informal procedure, or the grievance consists of issues or relief not raised under the informal procedure, return the grievance to the employee and explain the requirement that the informal procedure must be used before a decision can be made to accept or reject the grievance.
 - (3) If the issues in the grievance and the relief sought are not clearly described, the grievant shall be given the opportunity to provide additional information or clarification within a specified time limit. Vague or general allegations which do not detail the matter about which the employee is dissatisfied or the relief sought cannot be properly addressed or investigated and shall not be accepted for processing. If necessary, the servicing personnel office will assist the employee in identifying and clarifying the basis for the grievance (issues) and the personal relief sought.
 - (4) Accept the grievance and forward it and the grievance file to the appropriate deciding official.

c. Adjustment or Referral for Factfinding.

- (1) The deciding official shall give the grievance fair and impartial consideration. If only a negative decision is indicated by available information, the deciding official shall initiate factfinding procedures. Factfinding procedures are initiated by sending a memorandum to the servicing personnel office, with a copy to the employee, requesting that a factfinder be selected to inquire into the grievance. The deciding official shall not request a factfinder by name.
- (2) The deciding official may issue a written decision to the grievant without initiating factfinding procedures if it appears likely that the decision will be acceptable to the grievant. The written decision in such case shall, however, contain notice to the grievant that he or she may respond in writing within 7 days and request further consideration of the grievance if the decision is unacceptable. If the grievant does not request further consideration in a timely written response, the decision is implemented and the grievance is closed. If the grievant requests further consideration in a timely written response, the deciding official shall initiate factfinding procedures.
- (3) At the discretion of the person selected by the servicing personnel office to inquire into the grievance, factfinding procedures used may consist of:
 - (a) Obtaining of documentary evidence;
 - (b) Personal interviews;
 - (c) A group meeting;
 - (d) A hearing; or
 - (e) Any combination of subparagraphs (a) through (d).
- (4) Factfinding procedures shall be carried out by a person who has not been involved in the matter being grieved and who does not occupy a position subordinate to any official who recommended, advised, made a decision on, or who otherwise is or was involved in the matter being grieved. Reports of findings and recommendations established through factfinding shall be provided to the deciding official within 45 days of the receipt of the case.
- (5) Person(s) selected to carry out factfinding procedures must meet one of the following standards:
 - (a) Experience as a grievance examiner, arbitrator, administrative law judge, or investigator.

- (b) Satisfactory completion of a course for grievance examiners, arbitrators, or investigators.
- (c) A good working knowledge of the relationship between personnel administration and overall management concerns; the principles, systems, methods and administrative machinery for accomplishing the work of the DOE; and a high degree of ability to:
 - 1 Identify and select appropriate sources of information; collect, organize, analyze, and evaluate information and arrive at sound conclusions on the basis of that information;
 - 2 Analyze situations; make an objective and logical determination of the pertinent facts; evaluate the facts; and develop practical recommendations or decisions on the basis of facts;
 - 3 Recognize the causes of complex problems and apply mature judgment in assessing the practical implications of alternative solutions to those problems;
 - 4 Interpret and apply regulations and other complex written material;
 - 5 Communicate effectively, orally and in writing, including the ability to prepare clear and concise written reports; and
 - 6 Deal effectively with individuals and groups, including the ability to gain the cooperation and confidence of others.
- (6) If the factfinder determines that a hearing is required to establish the facts pertinent to the grievance, the parties involved shall identify, in writing, all witnesses they plan to call and the purpose of their testimony. The factfinder will give due consideration, when calling witnesses, to the numbers requested by the parties and the potential for duplication of evidence given by witnesses in terms of cost and use of official time. Any witnesses requested by the employee or by management who are under the jurisdiction of the DOE and whose testimony, in the judgment of the factfinder, is necessary for development of the facts will be called. DOE employees participating in a grievance proceeding as witnesses will be considered to be in a duty and pay status during such participation, if otherwise in a duty and pay status. If the factfinder determines that the presence of witnesses who are not DOE employees is relevant and in the interest of the Government, their transportation costs and per diem shall be paid in accordance with existing travel regulations. Such witnesses may not be compelled to appear to testify. Each witness will be advised that full and complete testimony is expected and that the witness will not be subjected to any restraint, coercion, discrimination, or reprisal as a result of such testimony.

- (7) Normally, if a hearing is held, a written summary will suffice. A hearing transcript will be made only when both parties request it, or when the factfinder determines that a verbatim transcript is necessary and so documents the grievance file.
- (8) The deciding official will furnish appropriate physical facilities, clerical support (including preparation of summaries or hearing transcripts), and other requirements for factfinding procedures.
- (9) Upon completion of the inquiry, the factfinder will assure that a designated member of the servicing personnel office, the employee, and the employee's designated representative, if any, have had an opportunity to review and comment on all documents in the grievance file. Any comments submitted must be included in the grievance file.
- (10) The factfinder will submit the original copy of the grievance file with a report of findings and recommendations to the-deciding official with a copy to the servicing personnel office.

d. Grievance Decision.

- (1) Upon receipt of the report of findings and recommendations, the deciding official must assure that the employee's point of view has received fair consideration. It is essential that all decisions at any level be based upon facts; be fully responsive to the employee's allegations, questions, or expressions of dissatisfaction; and, where the recommendation is adverse to the employee, contain a detailed explanation.
- (2) Within 7 days of receipt of the report of findings and recommendations the deciding official will either:
 - (a) Accept the recommendations contained in the report, and so notify the employee of the decision with a copy to the servicing personnel office. This written decision will be final and contain findings on all issues covered by the factfinding process. The employee may not request a further review of the same grievance within the DOE.
 - (b) Make a final decision to grant the personal relief sought by the employee, without regard to the recommendations contained in the report, provided such relief is consistent with policy, regulation or other administrative or statutory requirements.
 - (c) Determine that all or some of the recommendations contained in the report are unacceptable. In this case, the complete grievance file will be transmitted to the Director of Personnel with a specific statement of the basis for finding all or some of the recommendations unacceptable. A copy of the statement

will, at the time of transmittal to the Director of Personnel, be furnished to the employee and the employee's representative, if any.

- (3) Within 7 days of receipt, the Director of Personnel will review the grievance file and the deciding official's determination of unacceptability and will forward the complete file together with appropriate comments, suggestions, and recommendations concerning the reasons certain recommendations were determined unacceptable, to the next higher level supervisor in the management chain who has not been involved in the grievance.
- (4) The final decision of the next 'higher level supervisor in the management chain, as referenced in paragraph 4d(3), shall be rendered to the employee within 15 days after the receipt of the grievance file and a copy furnished concurrently to the servicing personnel office. This final decision will be in writing, and contain findings on all issues covered by the factfinding procedures, and direct what relief, if any, is to be provided. The employee may not obtain a further review of the same grievance within the DOE.

5. REVIEW OF GRIEVANCE DECISIONS THAT REJECT OR TERMINATE THE GRIEVANCE SHORT OF A FINAL DECISION ON ITS MERITS

- a. An employee may request review of any decision on a formal grievance when the decision rejects, cancels for failure to prosecute, or otherwise terminates the grievance without a final decision on its merits.
- b. The request for review shall be in writing explaining fully and clearly the basis for disagreeing with the contested decision, and shall be submitted to the servicing personnel office within 15 days after the date of receipt of the decision. The servicing personnel office will forward the request for review and a decision as to the appropriateness of the action to the Director of Personnel including, as appropriate, the informal and formal grievance and all replies and memorandums that constitute the grievance file at that time.
- c. The Director of Personnel will render a decision on the appropriateness of the decision to reject, cancel for failure to prosecute, or otherwise terminate a grievance without a final decision and may direct that a decision be rendered on the merits of the grievance.
- d. Should the Director of Personnel sustain the decision to reject or terminate the grievance, the employee may not obtain a further review of the same matter within the DOE.

CHAPTER III

GRIEVANCE PROCEDURE FOR RESOLVING MERIT PAY COVERAGE DISPUTES

1. SUMMARY. The employee initiates the grievance by submitting a written statement to the servicing personnel officer through his or her immediate supervisor. If the grievance is accepted and the personal relief is not granted, the servicing personnel officer shall initiate factfinding, and issue the employee an initial written decision. If the grievance is not resolved, the employee may request, through the servicing personnel officer, a final decision by the Director of Personnel.
2. TIME LIMITATIONS. The following is a schedule designed to provide reasonable time limitations for processing a merit pay coverage determination grievance. Every effort should be made to comply with this schedule:
 - a. Employee's Presentation of the Grievance. Within 15 days of receipt of the written notification of the merit pay coverage determination.
 - b. Designation by the Personnel Officer of A Person(s) to Conduct Factfinding. Seven days after receipt of the grievance.
 - c. Completion of Factfinding and Submission of the Report of Findings and recommendations to the Servicing Personnel Officer. Twenty-one days after receipt of the grievance from the servicing personnel officer.
 - d. Initial Decision Issued to the Employee by the Servicing Personnel Officer. Seven days after receipt of Report of Findings and Recommendations.
 - e. Employee's Request for Final Decision by the Director of Personnel. Seven days after receipt of the initial decision.
 - f. Issuance of Final Decision by the Director of Personnel. Fourteen days after receipt of the employee's request.
3. SUBMISSION OF GRIEVANCE. An employee may present a written statement disputing the merit pay coverage determination of the position he or she occupies within 15 days of receipt of the written determination, or within 15 days of a change in the duties of the position occupied. The change must be of the nature to raise a question concerning the current merit pay coverage determination of the position. The grievance shall be signed by the employee and submitted to the employee's servicing personnel officer through the employee's immediate supervisor. The supervisor shall append to the grievance any appropriate comments, such as whether he or she agrees or disagrees with the employee's representations concerning the applicability of merit pay coverage to the position in question. The written statement must contain sufficient data to identify and clarify the basis of the grievance and specify the personal relief sought by the employee. If the employee wishes to

designate a representative, the representative's name, address, and phone number must also be included.

4. ACCEPTANCE OR REJECTION OF A GRIEVANCE. Within 6 days of receipt of a grievance, the servicing personnel officer must take one of the following actions:
 - a. Reject the grievance if it was not filed within the time limitations specified for filing under this chapter or consists wholly of matters unrelated to the question of merit pay coverage of the position occupied by the grievant. (Matters unrelated to merit pay may be appropriate for consideration under another chapter of this Order.) The notice of rejection shall be in writing, give reasons for the rejection, and inform the employee of the right to request the Director of Personnel to review the decision to reject the grievance. When it is determined that a grievance is untimely, the grievance should not be accepted unless the employee furnishes, and the servicing personnel officer approves, a written explanation showing that the delay was caused by uncontrollable circumstances.
 - b. If the issues in the grievance and the personal relief sought are not clearly described, the employee should be given the opportunity to provide additional information or clarification within a specified time limit. If necessary, the servicing personnel office will assist the employee in identifying and clarifying the basis for the grievance and the personal relief sought.
 - c. Process the grievance under the appropriate chapter if it falls within the coverage of this Order.
 - d. Accept the grievance and so notify the employee.
5. ADJUSTMENT OR REFERRAL FOR FACTFINDING. The servicing personnel officer shall give the grievance fair and impartial consideration. If the grievance is not adjusted to the employee's satisfaction, the servicing personnel officer shall designate a person(s) with personnel management knowledge and experience, including supervisors and managers, to conduct factfinding and to provide a report of findings and recommendations. The factfinding procedures used shall be at the discretion of the factfinder. Normally, a hearing will not be required since the information needed to make decisions regarding merit pay coverage is usually a matter of record. The person(s) carrying out the factfinding procedures shall not have been involved in the original merit pay coverage determination and shall not occupy a position subordinate to any official who recommended, advised, made a decision on, or who otherwise was involved in the original determination.
6. REVIEW OF GRIEVANCE FILE.
 - a. Upon completion of the factfinding procedures, the factfinder will ensure that the employee and his or her designated representative, if applicable, has had an opportunity to review and comment on all documents in the

grievance file before the file is submitted to the servicing personnel office with the factfinder's report. Any comments submitted by the employee must be included in the grievance file.

- b. The factfinder will submit the original copy of the grievance file with a signed copy of the report of findings and recommendations to the servicing personnel officer and furnish a copy to both the immediate supervisor and the employee.

7. GRIEVANCE DECISION.

- a. Initial Decision. Within 7 days of receipt of the factfinder's report, the servicing personnel officer shall issue a written initial decision, to include reasons for the decision, to the employee through the employee's immediate supervisor. The employee will be advised that the initial decision will become the final decision of the Department within 7 days from the date the employee receives the initial decision. If the employee is not satisfied with the resolution contained in the initial decision, the employee may request that a final decision be made by the Director of Personnel.

- b. Final Decision.

- (1) Within 7 days of receipt of the initial decision, the employee may request a final decision by the Director of Personnel. The request shall be submitted through the employee's immediate supervisor and the servicing personnel officer and contain a brief summary of the reasons the initial decision is not acceptable. These reasons must focus on why the incumbent believes the position he or she occupies is or is not properly included or excluded under merit pay coverage.
- (2) Upon receipt of the employee's request, the servicing personnel officer shall forward the grievance file, including the factfinder's report, the employee's request and any further comments of the servicing personnel officer to the Director of Personnel.
- (3) After receipt of the employee's grievance, the Director of Personnel shall within 14 days either:
 - (a) Accept the initial decision of the servicing personnel officer and so notify the employee in writing of the decision and the reasons therefor. A copy of the decision of the Director of Personnel will be forwarded to the servicing personnel officer and the employee's immediate supervisor.
 - (b) Determine that the servicing personnel officer's decision was not correct. The employee will be notified in writing of the decision and the reasons therefor. A copy of the decision of the Director of Personnel will be forwarded to the servicing personnel officer and the employee's immediate supervisor.

7-2-81

- (4) The decision of the Director of Personnel shall be the final decision of the Department of Energy and the employee may not obtain further review of the same grievance within the Department of Energy.

8. REVIEW OF GRIEVANCE DECISIONS THAT REJECT OR OTHERWISE TERMINATE A MERIT PAY GRIEVANCE SHORT OF A FINAL DECISION ON MERITS.

- a. An employee may request review of a decision that rejects, cancels for failure to prosecute, or otherwise terminates the grievance without a final decision on its merits.
- b. The request for review shall be in writing, explaining fully and clearly the basis for disagreeing with the contested decision, and shall be submitted to the servicing personnel officer within 15 days after the date of receipt of the decision. The servicing personnel officer will forward to the Director of Personnel the request for review, the grievance file, and a statement of the reasons for rejecting, canceling, or otherwise terminating the grievance.
- c. The Director of Personnel will render a decision on the appropriateness of the decision to reject, cancel for failure to prosecute, or otherwise terminate a grievance without a final decision.
- de Should the Director of Personnel sustain the decision to reject or terminate the grievance, the employee may not obtain a further review of the same matter within the Department of Energy.

CHAPTER IV
SPECIAL PROVISIONS

1. PROCEDURES FOR RESOLVING GRIEVANCES CONCERNING THE INTERPRETATION OF REGULATIONS. In order to assist in the early resolution of grievances where the sole issue or one of the issues is the interpretation of regulations or policies, the following procedure will be used for seeking an official interpretation.
 - a. The supervisor, upon receipt of a grievance and upon reaching an agreement with-the grievant that the sole issue, or one of the issues, is the interpretation of a regulation or policy and that some form of personal relief is involved, will refer the grievance to the servicing personnel office which will request an official interpretation from the office of primary interest. The request will be made in writing and include a record of facts bearing on the case, including citation of the regulation(s) or policy(ies) involved, a copy of the employee's grievance, and any other supporting material that constitutes the grievance file at that time.
 - b. The employee and the employee's representative, if any, will be given the opportunity to review this material and to submit written comments as part of the record.
 - c. Upon receipt of the official interpretation, the servicing personnel office will notify the employee and the supervisor in writing of such final interpretation.
2. ALLEGATIONS OF UNFAIR LABOR PRACTICE. An allegation of an unfair labor practice made in connection with, and directly related to, a grievance covered by this Order must be incorporated into the grievance and processed in accordance with this Order. The decision on the grievance may not be construed as an unfair labor practice decision under section 7116 of title 5, United States Code. If an allegation of an unfair labor practice made in connection with, and directly related to, a grievance under this Order has already been filed with the Federal Labor Relations Authority, the portion of the grievance related to the unfair labor practice may not be processed under these procedures.
3. ALLEGATIONS OF DISCRIMINATION IN CONNECTION WITH A GRIEVANCE. The servicing personnel officer shall assure that the same issue is not processed under both the DOE equal employment opportunity complaint system and the grievance procedures. If an allegation of discrimination related to the grievance is raised at any stage in the grievance procedure, processing of the grievance under this Order shall be discontinued and the employee will be referred to the equal employment opportunity counselor for advice on processing the complaint under the DOE equal employment opportunity complaint system.

4. COMBINING FORMAL GRIEVANCES. When several employees within the same office have identical grievances (the dissatisfaction expressed and relief requested are the same), the grievance shall be joined and processed as one grievance. Such a grievance will be processed as a single grievance in the name of one employee designated by the others to act for them. All employees joining in the grievance must be identified and sign the grievance. An employee may withdraw from a group grievance at any time but may not, then, resubmit the grievance. Any withdrawal must be submitted in writing to the servicing personnel office. A decision rendered in a group grievance applies to all employees in the group, and each is provided a copy of the decision.
5. FORMAL GRIEVANCE DECISION AND REPORT OF FINDINGS AND RECOMMENDATIONS. A COPY of each formal grievance final decision and the report of findings and recommendations, if applicable, shall be forwarded to the Employee/Labor Management Relations Branch, Personnel Policies and Programs Division.
6. GRIEVANCE REOPENING. The Director of Personnel may recommend, in writing, to a deciding official that a grievance be reopened and reconsidered at any time, notwithstanding any other provision of this Order.

NONGRIEVABLE MATTERS

1. The content of published DOE regulations and policy.
2. A decision which is appealable to the Merit Systems Protection Board or subject to final administrative review by the Office of Personnel Management or the Equal Employment Opportunity Commission under law or regulations of the Office of Personnel Management or the Equal Employment Opportunity Commission.
3. Nonelection for promotion from a group of properly ranked and certified candidates.
4. A preliminary warning notice or an action which if effected would be covered under the grievance system or excluded from coverage by paragraph 2.
5. A return of an officer or employee from the Senior Executive Service to the General Schedule during the 1-year period of probation or for less than fully successful executive performance under section 3592 of title 5, United States Code.
6. An action which terminates a temporary promotion within a maximum period of 2 years and returns the employee to the position from which the employee was temporarily promoted.
7. The substance of the critical elements and performance standards of an employee's position which have been established in accordance with the requirements of Subchapter I of Chapter 43 of title 5, United States Code, and Part 430, Title 5, Code of Federal Regulations.
8. An action which terminates a term promotion at the completion of a specified period, in excess of 2 years but not more than 5 years, and returns the employee to the position from which promoted or to a different position of equivalent grade and pay in accordance with Part 335, Title 5, Code of Federal Regulations.
9. The granting of, or failure to grant, an employee performance award or the adopting of, or failure to adopt, an employee suggestion or invention under sections 4503-4505 of title 5, United States Code; or the granting of, or failure to grant, an award of the rank of meritorious or distinguished executive under section 4507 of title 5, United States Code.
10. The receipt of, or failure to receive, a performance award under section 5384 of title 5, United States Code, or a quality salary increase under section 5336 of title 5, United States Code.
11. A merit pay determination, or a merit pay increase or the lack of a merit pay increase under the merit pay system, or a decision on the granting of, or

failure to grant, cash or honorary recognition under Chapter 54 of title 5, United States Code, and Part 540 of Title 5, Code of Federal Regulations.

12. The termination under Subpart H of Part 315, Title 5, Code of Federal Regulations of a probationer for unsatisfactory performance.
13. A performance evaluation under Subchapter II of Chapter 43 of title 5, United States Code (performance appraisal of the Senior Executive Service).
14. A return of an employee from an initial appointment as a supervisor or manager to a nonsupervisory or nonmanagerial position for failure to satisfactorily complete the probationary period under section 3321(a)(2) of title 5, United States Code, and Subpart I of Part 315, Title 5, Code of Federal Regulations.
15. A separation action not excluded by this attachment.

U.S. Department of Energy
Washington, D.C.

PAGE CHANGE

DOE 3771.1 Chg 1

11-29-83

SUBJECT: GRIEVANCE POLICY AND PROCEDURES

1. PURPOSE. To transmit revised pages to DOE 3771.1, GRIEVANCE POLICY AND PROCEDURES, of 7-2-81.
2. EXPLANATION OF CHANGES. Clarification of Involvement by a deciding official; approval prior to using official time; transmittal of the grievance file to the Director of Personnel; procedures for requesting review of a decision to reject or cancel a grievance; and nongrievable matters that are subject to final administrative review outside of DOE, based on guidance from the Office of Personnel Management.

3. FILING INSTRUCTIONS.

a.	<u>Remove Page</u>	<u>Dated</u>	<u>Insert Page</u>	<u>Date</u>
	1	7-2-81	1	7-2-81
	2	7-2-81	2	11-29-83
	I-1	7-2-81	I-1	7-2-81
	I-2	7-2-81	I-2	11-29-83
	II-5	7-2-81	II-5	7-2-81
	II-6	7-2-81	II-6	11-29-83
	II-7 (and II-8)	7-2-81	II-7 (and II-8)	11-29-83
	Atch 1, page 1	7-2-81	Atch 1, page 1	11-29-83
	Atch 1, page 2	7-2-81	Atch 1, page 2	7-2-81

- b. After filing the attached pages, this transmittal may be discarded.

BY ORDER OF THE SECRETARY OF ENERGY:



WILLIAM S. HEFFELFINGER
Director of Administration

DISTRIBUTION:

All Departmental Elements
Federal Energy Regulatory Commission (info)

INITIATED BY:

Office of Personnel

U.S. Department of Energy
Washington, D.C.

ORDER

DOE 3771.1
7-2-81

SUBJECT: GRIEVANCE POLICY AND PROCEDURES

-
1. **PURPOSE.** To provide general policy guidance and instructions and state responsibilities for establishing and administering the grievance system of the Department of Energy (DOE). This Order is in accordance with part 771, title 5, Code of Federal Regulations, which sets forth the regulations under which each agency shall establish an administrative grievance system.
 2. **CANCELLATION.** Interim Management Directive 3771, GRIEVANCE POLICY AND PROCEDURES, of 2-17-78, and DOE N 3771.1, GRIEVANCE PROCEDURE FOR RESOLVING MERIT PAY COVERAGE DISPUTES, of 10-15-80.
 3. **COVERAGE AND EXCLUSIONS.**
 - a. **Coverage.**
 - (1) This Order covers all employees except those excluded in paragraphs 3b(1)(a) through (c).
 - (2) These procedures are intended to cover all matters of employee concern or dissatisfaction relating to employment that is subject to the control of management, and for which the employee seeks personal relief; including matters which the employee alleges have resulted in coercion, reprisal, or retaliation, and for which there is no other established procedure for appeal or complaint, and which is not otherwise excluded in subparagraph 3b.
 - (3) Only employees at the 13 through 15 grade level are covered by Chapter 111.
 - b. **Exclusions.**
 - (1) The following individuals are excluded from coverage of this Order:
 - (a) Employees excluded by part 771, title 5, Code of Federal Regulations.
 - (b) Employees who are members of a bargaining unit represented by a union which is recognized by the DOE and who are covered by a negotiated grievance procedure.
 - (c) Applicants for employment with DOE.
 - (2) This Order excludes matters excluded by part 771, title 5, Code of Federal Regulations. Attachment 1 contains a detailed list of these exclusions.

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Office of Personnel

4. DEFINITIONS.

- a. Deciding Official. Except in the case of the Secretary, an official at a higher organizational level (not necessarily higher grade) than any other individual directly involved in the matter being grieved and who has been delegated the authority to make final decisions on formal grievances. The deciding official is normally the supervisor manager immediately above the supervisor to whom the informal grievance was submitted, unless that individual was directly involved in the action being grieved. Involvement means more than mere knowledge of the matter being grieved. To have been "involved", the deciding official must have made or influenced a decision regarding the matter being grieved or must have a personal interest in the matter. In the latter event, the deciding official shall be the next higher level supervisor in the management chain who was not directly involved in the action being grieved. Only the Secretary may be involved in a grievance, be the supervisor with whom an informal grievance is filed, and be the deciding official.
- b. Days. Calendar days.
- c. Employees. Includes former DOE employees who meet the time limits for presenting a grievance and for whom a remedy can be granted. In Chapter III, this definition means employees who are in grades 13 through 15 only.
- d. Factfinding.
- (1) An inquiry suitable to ascertain the relevant circumstances surrounding a grievance and to provide the basis for a written report which contains appropriate recommendations on the matter being examined and reasons for the recommendations.
 - (2) In the event of a merit pay grievance, the report shall contain information, facts, and supporting documents for the original determination and the recommended decision shall be limited to include or exclude the employee's position under the merit pay system. The inquiry shall include, but not necessarily be limited to, consideration of:
 - (a) The point of view of the supervisor, the employee, and a representative from the servicing personnel office.
 - (b) Applicable laws, regulations, case decisions, and Departmental policies.
- e. Formal Grievance. A request made in writing by an employee, a former employee, or a group of employees acting as individuals, for personal relief in a matter of concern or dissatisfaction relating to the employment of the employee(s) which is subject to the control of DOE management.

Vertical line denotes change.

CHAPTER I
GENERAL

1. SUPPLEMENTS AND REDELEGATIONS. This Order shall not be supplemented without prior approval from the Director of Personnel. This does not apply to redelegating authority.
2. REPRESENTATION.
 - a. An employee has the right to be accompanied, represented, and advised by a representative of his or her choice at any stage of the proceeding except that this right does not accord the grievant or the representative the right to appear personally before the Director of Personnel. The designation of a representative must be in writing and provided to the supervisor or deciding official. If the grievant chooses another employee of the DOE as a representative and that person is willing to serve, the representative's supervisor, acting independently or in concert with the grievant's supervisor, may disallow the employee's choice of a representative in a grievance on the basis of:
 - (1) Priority needs of the DOE mission. For instance, it is not intended that any one employee serve as a representative when doing so repeatedly would interfere with the priority needs of the DOE mission. Should this condition arise, the employee concerned will be advised by the supervisor to curtail representation activities.
 - (2) Unreasonable cost to the DOE.
 - (3) Conflict of interest or conflict of position.
 - b. The grievant may challenge a decision to disallow the choice of representative to the deciding official and obtain a decision before proceeding with the grievance. If the grievance is presented under the procedures in Chapter II, the challenge will be submitted to the servicing personnel officer who will forward the challenge to the representative's supervisor at the next higher level in the management chain who was not involved in the original decision to disallow the representative. The deciding official or supervisor will make a decision regarding the disallowance of a representative no later than 10 days after receipt of the challenge.
 - c. The DOE will not designate a representative for a grievant, nor will the DOE require any employee or individual to serve as a representative of another. If a grievant requests assistance in obtaining representation, the servicing personnel office will make available to the grievant information concerning sources of assistance. All arrangements for a representative must be made by the grievant.

11-29-83

- d. In the event the grievant wishes to change representatives, the procedures described in subparagraphs 2a through 2c apply.
3. COMMUNICATION. An employee has a right to communicate with the servicing personnel office or any DOE counselor at any stage of the grievance procedure.
4. USE OF OFFICIAL TIME.
 - a. An employee and the employee's representative (if employed by the DOE) are entitled to a reasonable amount of official time to present a grievance; they are not entitled to official time to prepare the grievance except to the extent necessary to obtain information and interview witnesses not otherwise available during nonwork hours. Employees must obtain approval from their supervisors prior to the use of official time. "Presenting" includes discussions with supervisors and attendance at any hearing, inquiry, or meeting in the formal stage.
 - b. When the deciding official hearing the formal grievance deems it necessary to the presentation of the grievance, the employee and the representative (if employed by the DOE) shall be permitted official travel, and travel time shall not be charged to leave. In no case will the employee or the representative be granted official time or be reimbursed for expenses associated with the investigation or presentation of a grievance, except as provided in subparagraphs 4a and b.
5. OBLIGATION OF THE EMPLOYEE. An employee, in exercising the entitlement to present a grievance under this Order, shall:
 - a. Comply with appropriate time limits established in this Order;
 - b. Furnish sufficient detail to clearly identify the matter being grieved; and
 - c. Specify the personal relief being requested.
6. GRIEVANCE FOLLOWUP
 - a. Servicing personnel offices and supervisors shall followup on grievances to assure that the relief granted the employee and any recommendations contained in the report of findings and recommendations accepted by the deciding official have been implemented.
 - b. In all cases where a decision is favorable to an employee, the specific action to be taken shall be set forth in the written decision. The action directed shall be taken promptly, with followup in accordance with the above paragraph.
7. CANCELLATION OF GRIEVANCE. A grievance shall be canceled:
 - a. At the employee's written request.

Vertical line denotes change.

- (b) Satisfactory completion of a course for grievance examiners, arbitrators, or investigators.
- (c) A good working knowledge of the relationship between personnel administration and overall management concerns; the principles, systems, methods, and administrative machinery for accomplishing the work of the DOE; and a high degree of ability to:
 - 1 Identify and select appropriate sources of information; collect, organize, analyze, and evaluate information and arrive at sound conclusions on the basis of that information;
 - 2 Analyze situations; make an objective and logical determination of the pertinent facts; evaluate the facts; and develop practical recommendations or decisions on the basis of facts;
 - 3 Recognize the causes of complex problems and apply mature judgment in assessing the practical implications of alternative solutions to those problems;
 - 4 Interpret and apply regulations and other complex written material;
 - 5 Communicate effectively, orally and in writing, including the ability to prepare clear and concise written reports; and
 - 6 Deal effectively with individuals and groups, including the ability to gain the cooperation and confidence of others.
- (6) If the factfinder determines that a hearing is required to establish the facts pertinent to the grievance, the parties involved shall identify, in writing, all witnesses they plan to call and the purpose of their testimony. The factfinder will give due consideration, when calling witnesses, to the numbers requested by the parties and the potential for duplication of evidence given by witnesses in terms of cost and use of official time. Any witnesses requested by the employee or by management who are under the jurisdiction of the DOE and whose testimony, in the judgment of the factfinder, is necessary for development of the facts will be called. DOE employees participating in a grievance proceeding as witnesses will be considered to be in a duty and pay status during such participation, if otherwise in a duty and pay status. If the factfinder determines that the presence of witnesses who are not DOE employees is relevant and in the interest of the Government, their transportation costs and per diem shall be paid in accordance with existing travel regulations. Such witnesses may not be cancelled to appear to testify. Each witness will be advised that full and complete testimony is expected and that the witness will not be subject to any restraint, coercion, discrimination, or reprisal as a result of such testimony.

- (7) Normally, if a hearing is held, a written summary will suffice. A hearing transcript will be made only when both parties request it, or when the factfinder determines that a verbatim transcript is necessary and so documents the grievance file.
- (8) The deciding official will furnish appropriate physical facilities, clerical support (including preparation of summaries of hearing transcripts), and other requirements for factfinding procedures.
- (9) Upon completion of the inquiry, the factfinder will assure that a designated member of the servicing Personnel office, the employee, and the employee's designated representative, if any, have had an opportunity to review and comment on all documents in the grievance file. Any comments submitted must be included in the grievance file.
- (10) The factfinder will submit the original copy of the grievance file with a report of findings and recommendations to the deciding official with a copy to the servicing personnel office.

d. Grievance Decision.

- (1) Upon receipt of the report of findings and recommendations, the deciding official must assure that the employee's point of view has received fair consideration. It is essential that all decisions at any level be based upon facts; be fully responsive to the employee's allegations, questions, or expressions of dissatisfaction; and, where the recommendation is adverse to the employee, contain a detailed explanation.
- (2) Within 7 days of receipt of the report of findings and recommendations, the deciding official will either:
 - (a) Accept the recommendations contained in the report, and so notify the employee of the decision with a copy to the servicing personnel office. This written decision will be final and contain findings on all issues covered by the factfinding process. The employee may not request a further review of the same grievance within the DOE.
 - (b) Make a final decision to grant the personal relief sought by the employee, without regard to the recommendations contained in the report, provided such relief is consistent with policy, regulation, or other administrative or statutory requirements.
 - (c) Determine that all or some of the recommendations contained in the report are unacceptable. In this case, the complete grievance file will be transmitted, through the Director of

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Vertical line denotes change.

| Personnel Policies and program (MA-202), to the Director of Personnel (MA-20) with a specific statement of the basis for finding all or some of the recommendations unacceptable. A copy of the statement will, at the time of transmittal to the Director of Personnel, be furnished to the employee and the employee's representative, if any.

- (3) Within 7 days of receipt, the Director of Personnel will review the grievance file and the deciding official's determination of unacceptability and will forward the complete file together with appropriate comments, suggestions, and recommendations concerning the reasons certain recommendations were determined unacceptable, to the next higher level supervisor in the management chain who has not been involved in the grievance.
- (4) The final decision of the next higher level supervisor in the management chain, as referenced in paragraph 4d(3), shall be rendered to the employee within 15 days after the receipt of the grievance file and a copy furnished concurrently to the servicing personnel office. This final decision will be in writing, contain findings on all issues covered by the factfinding procedures, and direct what relief, if any, is to be provided. The employee may not obtain a further review of the same grievance within the DOE.

5. REVIEW OF GRIEVANCE DECISIONS THAT REJECT OR TERMINATE THE GRIEVANCE SHORT OF A FINAL DECISION ON ITS MERITS.

- a. An employee may request review of any decision on a formal grievance when the decision rejects, cancels for failure to prosecute, or otherwise terminates the grievance without a final decision on its merits.
- b. The request for review shall be in writing explaining fully and clearly the basis for disagreeing with the contested decision, and shall be submitted to the servicing personnel office within 15 days after the date of receipt of the decision. The servicing personnel office will transmit the request for review, a copy of the decision that rejected, canceled, or terminated the grievance, and the complete grievance file, through the Director of Personnel Policies and Programs, to the Director of Personnel. The grievance file should be established in accordance with Chapter I, paragraph 8, of this Order.
- c. The Director of Personnel will render a decision on the appropriateness of the decision to reject, cancel for failure to prosecute, or otherwise terminate a grievance without a final decision and may direct that a decision be rendered on the merits of the grievance.
- d. Should the Director of Personnel sustain the decision to reject or terminate the grievance, the employee may not obtain a further review of the same matter within the DOE.

Vertical line denotes change.

NONGRIEVABLE MATTERS

1. The content of published DOE regulations and policy.
2. A decision which is appealable to the Merit Systems Protection Board.
3. A decision subject to final administrative review by the Office of Personnel Management under applicable laws or regulations.
4. A decision subject to final administrative review by the Equal Employment Opportunity Commission under applicable laws or regulations.
5. Matters administered by the General Accounting Office and the Office of Workers Compensation Programs.
6. Grievances with issues included in a complaint filed with the Office of Special Counsel, MSPB, will not be processed until the allegation filed with the Special Counsel is resolved. This avoids dual consideration. Pursuant to title 5, Code of Federal Regulations, section 1251.2, the Office of Special Counsel shall make no investigation if it determines that the method may be resolved more appropriately under an administrative appeals procedure, including a pending grievance under a formal agency grievance proceeding.
7. Nonelection for promotion from a group of properly ranked and certified candidates.
8. A preliminary warning notice or an action which if effected would be covered under the grievance system or excluded from coverage by paragraph 2.
9. A return of an officer or employee from the Senior Executive Service to the General Schedule during the 1-year period of probation or for less than fully successful executive performance under section 3592 of title 5, United States Code.
10. An action which terminates a temporary promotion within a maximum period of 2 years and returns the employee to the position from which the employee was temporarily promoted.
11. The substance of the critical elements and performance standards of an employee's position which have been established in accordance with the requirements of subchapter I of chapter 43 of title 5, United States Code, and part 430, title 5, Code of Federal Regulations.
12. An action which terminates a term promotion at the completion of a specified period, in excess of 2 years but not more than 5 years, and returns the employee to the position from which promoted or to a different position of equivalent grade and pay in accordance with part 335, title 5, Code of Federal Regulations.

Vertical line denotes changes.

13. The granting of, or failure to grant, an employee performance award or the adopting of, or failure to adopt, an employee suggestion or invention under sections 4503-4505 of title 5, United States Code; or the granting of, or failure to grant, an award of the rank of meritorious or distinguished executive under section 4507 of title 5, United States Code.
14. The receipt of, or failure to receive, a performance award under section 5384 of title 5, United States Code, or a qualify salary increase under section 5336 of title 5, United States Code.
15. A merit pay determination, or a merit pay increase or the lack of a merit pay increase under the merit pay system or a decision on the granting of, or failure to grant, cash or honorary recognition under chapter 54 of title 5, United States Code, and part 540 of title 5, Code of Federal Regulations.
16. The termination under subpart H of part 315, title 5, Code of Federal Regulations of a probationer for unsatisfactory performance.
17. A performance evaluation under subchapter II of chapter 43 of title 5, United States Code (performance appraisal of the Senior Executive Service).
18. A return of an employee from an initial appointment as a supervisor or manager to a nonsupervisory or nonmanagerial position for failure to satisfactorily complete the probationary period under section 3321(a)(2) of title 5, United States Code, and subpart I of part 315, title 5, Code of Federal Regulations.
19. A separation action not excluded by this Attachment.

U.S. Department of Energy
Washington, D.C.

PAGE CHANGE

DOE 3771.1 Chg 2

8-13-85

SUBJECT: GRIEVANCE POLICY AND PROCEDURES

1. PURPOSE. To transmit a revised page to Chapter II of DOE 3771.1, GRIEVANCE . POLICY AND PROCEDURES, of 7-2-81.
2. EXPLANATION OF CHANGE. Military reservists and retired military subject to recall may grieve a designation of key employee. Paragraph 3f clarifies the grievance procedure.
3. FILING INSTRUCTIONS.

<u>Remove Page</u>	<u>Dated</u>	<u>Insert Page</u>	<u>Dated</u>
II-1	7-2-81	II-1	7-2-81
II-2	7-2-81	II-2	8-13-85

- a.
- b. After filing the attached page, this transmittal may be discarded.

BY ORDER OF THE SECRETARY OF ENERGY:



WILLIAM S. HEFFELFINGER
Director of Administration

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INITIATED BY:
Office of Personnel

CHAPTER 11

ADMINISTRATIVE GRIEVANCE PROCEDURE

1. SUMMARY. The employee initiates an informal grievance by first discussing the matter with the immediate supervisor. If the matter is not resolved in the informal stage, the employee may submit a formal grievance to the servicing personnel office which will either accept, reject, or return the grievance on behalf of the deciding official. If the grievance is accepted, it will be forwarded to the deciding official. If personal relief is not granted, the deciding official will initiate factfinding procedures. The deciding official will then either accept the recommendations of the factfinder or determine that the recommendations of the factfinder are unacceptable and forward the case to the servicing personnel office to be submitted to the Director of Personnel. The deciding official may also reconsider at this point and decide to grant the personal relief originally requested, so long as it is consistent with policy, regulations, or other administrative or statutory requirement. The Director of Personnel will make recommendations, comments, or suggestions to the appropriate higher level supervisor who will make the final decision concerning the grievance and forward the decision to the grievant and a copy to the appropriate servicing personnel office. The procedures contained herein are applicable only to current employees. Former employees, who meet the time limits, shall submit a grievance directly to the Director of Personnel who will, upon receipt of the grievance, decide appropriate processing.
2. TIME LIMITATIONS. An employee may present a grievance concerning a continuing practice or condition at any time. A grievance concerning a particular act or occurrence must be presented within 15 days of the date of that act or occurrence or within 15 days of the date the employee became aware of the act or occurrence. The following is a schedule designed to permit reasonable time limits for the processing of a grievance.
 - a. Completion of the Informal Procedure--within 21 days from the date the grievance is first brought to the attention of the immediate supervisor.
 - b. Filing of the Formal Grievance--within 7 days of completion of the informal procedure, or not later than 28 days after initiation if the informal procedure if no reply has been received in the informal procedure.
 - c. Adjustment or Referral of Formal Grievance to Servicing Personnel Office for Assignment of Factfinder--7 days.
 - d. Completion of Factfinding Procedures and Submission of the Report of Findings and Recommendations--45 days.
 - e. Issuance of the Decision by Deciding Official After Receipt of Report of Findings and Recommendations--7 days.

- f. Issuance of Decision by Appropriate Higher Level Official Deciding Official Does Not Accept Report of Findings and Recommendations--
15 days after receipt.

3. INFORMAL GRIEVANCE PROCEDURE. An employee shall complete the informal procedure before the Department may accept a grievance under the formal procedure, except as noted under subparagraphs 3e and f. The following informal procedure is required:
- a. A grievance shall first be discussed with an employee's immediate supervisor. The employee shall specify that an informal grievance is being presented.
 - b. When the grievance involves a decision or matter under the cognizance of an official outside the employee's normal supervisory line, or not within the immediate supervisor's authority, the informal procedure will be administered by the employee's immediate supervisor who will confer with the appropriate official before providing the employee a response to the grievance.
 - c. The supervisor to whom a grievance has been presented for informal adjustment will attempt to resolve it as expeditiously as possible, seeking the advice and assistance of others where necessary, and will give the employee a written decision on the matter not later than 21 days after the date it was received. If the adjustment sought is not granted, the employee will be informed in writing of the reason and the right to request consideration under the formal procedure.
 - d. The immediate supervisor may not refuse to consider a grievance in the informal stage for any reason. If the grievance is not timely or consists of matters not covered under the grievance system, the employee shall be so advised, but the employee must be allowed to invoke under the informal procedure if desired, that is, the employee must be allowed to set forth his or her concern or dissatisfaction to the immediate Supervisor who must listen and respond within the context of the grievance procedure.
 - e. Within 7 days of receipt of a letter of decision on a suspension of 14 calendar days or less or a letter of reprimand, an employee may present a grievance directly under the formal procedure without using the informal procedure. The appropriate time limitation in paragraph 2 applies.
 - f. Within 7 days of receipt of a written notification, an employee designated as a key employee may present a grievance directly under the formal procedure without using the informal procedure. The appropriate time limitation in paragraph 2 applies.

4. FORMAL PROCEDURE.

a. Submission of Grievance.

- (1) When an employee receives a decision under the informal procedure, or when the time limit for management to respond had expired without a

U.S. Department of Energy
Washington, D.C.

PAGE CHANGE

DOE 3771.1 Chg 3

8-21-92

SUBJECT: GRIEVANCE POLICY AND PROCEDURES

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1. PURPOSE. To transmit revised pages to DOE 3771.1, GRIEVANCE POLICY AND PROCEDURES, of 7-2-81.
 2. EXPLANATION OF CHANGE. To make editorial revisions to reflect only organizational title and routing symbol changes required by Notices in the SEN-6 series. No substantive changes have been made at this time. However, this Order will undergo substantive changes in the near future. If you have any questions about specific provisions of the Order, please consult appropriate staff members in the Office of Personnel.

3. FILING INSTRUCTIONS.

a.	<u>Remove Page</u>	<u>Dated</u>	<u>Insert Page</u>	<u>Dated</u>
	3	7-2-81	3	8-21-92
	4	7-2-81	4	7-2-81
	II-7 (and II-8)	11-29-83	II-7 (and II-8)	8-21-92
	IV-1	7-2-81	IV-1	7-2-81
	IV-2	7-2-81	IV-2	8-21-92
b.	After filing the attached pages, this transmittal may be discarded.			

BY ORDER OF THE SECRETARY OF ENERGY:



DOLORES L. ROZZI
| Director of Administration
and Human Resource Management

DISTRIBUTION:
All Departmental Elements

INITIATED BY:
Office of Personnel

- f. Grievance File. A separate file which contains all documents related to the grievance (see Chapter I, paragraph 8).
- g. Merit Pay Coverage Determination Grievance. A written request by an employee that specifically disputes the merit pay coverage determination of the position occupied by the employee at the time the determination was originally made and that requests personal relief.
- h. Personal Relief. A specific remedy within the control of management directly benefiting the grievant. Limited under Chapter 111 to a specific request for inclusion or exclusion of the position occupied by the grievant under the merit pay system. Personal relief may not include a request for disciplinary or other action affecting another employee.

5. POLICY.

- a. The procedures set forth in this Order shall be administered in a manner which will ensure the orderly, expeditious, and equitable handling of grievances.
- b. Employees using these procedures or acting as representatives under these procedures shall not be subject to restraint, interference, coercion, discrimination, or reprisal by any supervisor or management official.

6. RESPONSIBILITIES AND AUTHORITIES.

a. Heads of Headquarters Elements and Heads of Field Elements with Personnel Authority.

- (1) Assure that employees under their jurisdiction are informed of the provisions of this Order.
- (2) Develop necessary procedures for carrying out the policies contained in this Order.
- (3) Designate deciding officials to receive and attempt to adjust formal grievances, and supervisory officials to render final decisions on formal grievances referred by the Director of Personnel.

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b. Director of Administration and Human Resource Management. Assures that the overall grievance system of the DOE is administered in accordance with the regulations and guidelines of the Office of personnel Management.

c. Director of Personnel.

- (1) Makes recommendations, comments and suggestions to the appropriate supervisory official when the deciding official does not accept the recommendations contained in the report of factfinding.
- (2) Makes the final decision on grievances concerning merit pay coverage determinations when the grievant is not satisfied with the initial decision of the servicing personnel officer.

- (3) Renders a final decision on the appropriateness of a rejection or cancellation of a grievance by the deciding official and may direct that a decision be rendered on the merits of the grievance.

d. Deciding Officials.

- (1) Receive and attempt to adjust formal grievances.
- (2) If the formal grievance is not adjusted to the employee's satisfaction, request the servicing personnel office to obtain a person(s) to carry out factfinding.
- (3) Make decisions regarding the disallowance of a representative under Chapter II, "Administrative Grievance Procedure."
- (4) Issue final decisions on formal grievances when all the recommendations contained in the report of factfinding are accepted.

e. Supervisors.

- (1) Promptly discuss matters of concern with employees under their immediate supervision when a grievance is presented informally, and try to clarify misunderstandings and make reasonable adjustments to resolve the matter.
- (2) Promptly obtain answers from an appropriate source when an employee under their supervision presents an informal grievance that is not within the supervisor's authority to resolve.
- (3) Review and comment on grievances concerning merit pay coverage determinations.
- (4) Make decisions regarding the disallowance of a representative under Chapter III, "Grievance Procedure for Resolving Merit Pay Coverage Disputes."

f. Personnel Officers.

- (1) Provide advice to management, individual employees, employee representatives, and other interested parties as to the application and details of the grievance procedures.
- (2) Provides technical advice on the processing of all formal grievances and grievances concerning merit pay coverage determination.
- (3) Issue initial decisions on grievances concerning merit pay coverage determinations.

Employee-Labor Relations & Program Evaluation Division (AD-54), to the Director of Personnel (AD-50) with a specific statement of the basis for finding all or some of the recommendations unacceptable. A copy of the statement will, at the time of transmittal to the Director of Personnel, be furnished to the employee and the employee's representative, if any.

- (3) Within 7 days of receipt, the Director of Personnel will review the grievance file and the deciding official's determination of unacceptability and will forward the complete file together with appropriate comments, suggestions, and recommendations concerning the reasons certain recommendations were determined unacceptable, to the next higher level supervisor in the management chain who has not been involved in the grievance.
- (4) The final decision of the next higher level supervisor in the management chain, as referenced in paragraph 4d(3), shall be rendered to the employee within 15 days after the receipt of the grievance file and a copy furnished concurrently to the servicing personnel office. This final decision will be in writing, contain findings on all issues covered by the factfinding procedures, and direct what relief, if any, is to be provided. The employee may not obtain a further review of the same grievance within the DOE.

5. REVIEW OF GRIEVANCE DECISIONS THAT REJECT OR TERMINATE THE GRIEVANCE
SHORT OF A FINAL DECISION ON ITS MERITS.

- a. An employee may request review of any decision on a formal grievance when the decision rejects, cancels for failure to prosecute, or otherwise terminates the grievance without a final decision on its merits.
- b. The request for review shall be in writing explaining fully and clearly the basis for disagreeing with the contested decision, and shall be submitted to the servicing personnel office within 15 days after the date of receipt of the decision. The servicing personnel office will transmit the request for review, a copy of the decision that rejected, canceled, or terminated the grievance, and the complete grievance file, through the Director of Employee-Labor Relations and Program Evaluation Division, to the Director of Personnel. The grievance file should be established in accordance with Chapter I, paragraph 8, of this Order.
- c. The Director of Personnel will render a decision on the appropriateness of the decision to reject, cancel for failure to prosecute, or otherwise terminate a grievance without a final decision and may direct that a decision be rendered on the merits of the grievance.
- d. Should the Director of Personnel sustain the decision to reject or terminate the grievance, the employee may not obtain a further review of the same matter within the DOE.

CHAPTER IV

SPECIAL PROVISIONS

1. PROCEDURES FOR RESOLVING GRIEVANCES CONCERNING THE INTERPRETATION OF REGULATIONS. In order to assist in the early resolution of grievances where the sole issue or one of the issues is the interpretation of regulations or policies, the following procedure will be used for seeking an official interpretation.
 - a. The supervisor, upon receipt of a grievance and upon reaching an agreement with the grievant that the sole issue, or one of the issues, is the interpretation of a regulation or policy and that some form of personal relief is involved, will refer the grievance to the servicing personnel office which will request an official interpretation from the office of primary interest. The request will be made in writing and include a record of facts bearing on the case, including citation of the regulation(s) or policy(ies) involved, a copy of the employee's grievance, and any other supporting material that constitutes the grievance file at that time.
 - b. The employee and the employee's representative, if any, will be given the opportunity to review this material and to submit written comments as part of the-record.
 - c. Upon receipt of the official interpretation, the servicing personnel office will notify the employee and the supervisor in writing of such final interpretation.
2. ALLEGATIONS OF UNFAIR LABOR PRACTICE. An allegation of an unfair labor practice made in connection with, and directly related to, a grievance covered by this Order must be incorporated into the grievance and processed in accordance with this Order. The decision on the grievance may not be construed as an unfair labor practice decision under section 7116 of title 5, United States Code. If an allegation of an unfair labor practice made in connection with, and directly related to, a grievance under this Order has already been filed with the Federal Labor Relations Authority, the portion of the grievance related to the unfair labor practice may not be processed under these procedures.
3. ALLEGATIONS OF DISCRIMINATION IN CONNECTION WITH A GRIEVANCE The servicing personnel officer shall assure that the same issue is not processed under both the DOE equal employment opportunity complaint system and the grievance procedures. If an allegation of discrimination related to the grievance is raised at any stage in the grievance procedure, processing of the grievance under this Order shall be discontinued and the employee will be referred to the equal employment opportunity counselor for advice on processing the complaint under the DOE equal employment opportunity complaint system.

4. COMBINING FORMAL GRIEVANCE. When several employees within the same office have identical grievances (the dissatisfaction expressed and relief requested are the same), the grievance shall be joined and processed as one grievance. Such a grievance will be processed as a single grievance in the name of one employee designated by the others to act for them. All employees joining in the grievance must be identified and sign the grievance. An employee may withdraw from a group grievance at any time but may not, then, resubmit the grievance. Any withdrawal must be submitted in writing to the servicing personnel office. A decision rendered in a group grievance applies to all employees in the group, and each is provided a copy of the decision.
5. FORMAL GRIEVANCE DECISION AND REPORT OF FINDINGS AND RECOMMENDATIONS. A copy of each formal grievance final decision and the report of findings and recommendations, if applicable, shall be forwarded to the Employee-Labor Relations Policy Branch, Employee-Labor Relations and Program Evaluation Division.
6. GRIEVANCE REOPENING. The Director of Personnel may recommend, in writing, to a deciding official that a grievance be reopened and reconsidered at any time, notwithstanding any other provision of this Order.

