

**MEMORANDUM**

**REVISION 34 SERIES D**

**TO:** Holders of Career Service Rule Books

**FROM:** Career Service Board

**DATE:** January 10, 2018

**SUBJECT:** Addition of Career Service Rule 21 **APPEALS TO THE CAREER SERVICE BOARD**

The addition of Career Service Rule 21 was approved by the Career Service Board on January 4, 2018. Please insert the following pages in your rule book as soon as possible. Thank you.

**RULE 21**  
**APPEALS TO THE CAREER SERVICE BOARD**  
(Effective January 10, 2018; Rule Revision Memo 34D)

Purpose Statement:

The purpose of this rule is to provide a fair, efficient, and speedy administrative review of appeals from the Career Service Hearing Office.

Section 21-10 Interlocutory Appeals

An interlocutory appeal is an interim appeal to the Career Service Board while an appeal to the Hearing Office is pending, to decide a particular issue or issues that may substantially affect the final result of the pending appeal before the Hearing Office or that implicates a privilege.

- A. The following rulings by the Hearing Officer may be appealed immediately and reviewed de novo:
  - 1. A ruling regarding subject matter jurisdiction;
  - 2. A ruling directing a party to produce evidence that the party asserts, in good faith, is privileged; or
  - 3. Any other ruling by a Hearing Officer that violates Rule 19 and/or Rule 20.
- B. The appeal before the Hearing Office shall be automatically stayed pending resolution of the interlocutory appeal.
- C. A request for a hearing transcript or notice that no transcript is being requested is required for interlocutory appeals; however, the Career Service Board may render a decision without transcripts or a briefing.
  - 1. If the petitioner has requested a transcript, the petitioner's brief shall be filed with the Board within fourteen (14) calendar days after the date of service by the Hearing Office of notice that the transcript is complete.
  - 2. If no transcript is requested, the petitioner's brief shall be filed with the Board within fourteen (14) calendar days after the date of service by the petitioner of notice that no transcript is being requested from the Hearing Office.
  - 3. The respondent shall file its answer brief within fourteen (14) calendar days after the date of service of the petitioner's brief.
  - 4. No reply briefs are permitted for interlocutory appeals.
- D. The Board may sua sponte deny an interlocutory appeal at any time.

## Section 21-20 Petition for Review to the Board of a Hearing Officer's Decision

The Board has the authority to review and decide all petitions and cross-petitions for review permitted under this Rule 21 and shall perform the functions necessary to implement a fair, efficient, and speedy appeal process.

### 21-21 Grounds for Petition for Review

A party may petition the Board to review a Hearing Officer's decision only on the following grounds:

- A. New evidence: The Board may reverse a decision based on new evidence if the evidence is (1) such that it could not, with reasonable diligence, have been discovered at the time of the hearing; (2) favorable to the party appealing to the Board; (3) pertinent to a determination of at least one issue of the appeal; and (4) of such substance and importance that consideration of the evidence could result in a different outcome of the case.
- B. Erroneous interpretation of applicable authority: The Board may reverse a decision based on an erroneous interpretation of any applicable legal authority. A Hearing Officer's interpretation of applicable legal authority is subject to de novo review.
- C. Policy-setting precedent: The Hearing Officer's decision is of a precedential nature involving policy considerations that may have effect beyond the appeal at hand.
- D. Insufficient evidence: The Hearing Officer's decision is not supported by the evidence. The Board may only reverse a decision on this ground if the Hearing Officer's decision is clearly erroneous; or
- E. Lack of jurisdiction: The Hearing Officer does not have jurisdiction over the appeal. A Hearing Officer's assertion of jurisdiction over an appeal is subject to de novo review.

### 21-22 Form of Petition for Review

The petition for review shall be in writing, and shall include:

- A. The name and number of the appeal;
- B. The names and addresses of all parties to the appeal and of their attorneys or representatives;
- C. The date of the Hearing Officer's decision;

- D. A brief statement of the grounds for the petition for review from subsection 21-21, including the factual or legal basis which the party asserts exists to support each ground of the petition. If the party is asserting “new evidence,” the party shall state the nature of the new evidence and the reason(s) for its unavailability at hearing. Such statement shall be limited to 20 pages total, typewritten, text double-spaced, Times New Roman 12-point font, using only 8½ x 11-inch paper; and
- E. The action the petitioner wants the Board to take.

#### 21-23 Filing Deadline

The petition for review shall be filed with the Board within fourteen (14) calendar days after the date of the mailing or e-mailing of the Hearing Officer’s decision.

The filing of documents required in connection with a petition for review shall be made by e-mail. The party filing by e-mail shall retain an electronic copy of the e-mail including sender, date, subject, and the address to which the e-mail was sent. Filing and service shall be made to the e-mail address provided:

1. By the opposing party (or the opposing party’s representative).
2. By the Career Service Board on its website.

#### 21-24 Cross-Petition for Review

- A. The other party to the appeal may file a cross-petition for review which shall comply with subsections 21-22 and 21-23, except that it shall be filed within seven (7) calendar days after service of the petition for review.
- B. If a cross-petition for review is not filed, no other response is required until the answer brief is due.
- C. If both parties file a petition for review, the employee shall be deemed the “petitioner” and the department or agency shall be deemed the “cross-petitioner.”

#### 21-25 Stay of Hearing Officer’s Decision

- A. A Motion to Stay the Hearing Officer’s Decision must be filed on or before the deadline for the Petition for Review.
- B. When any petition or cross-petition for review is filed, the Board may stay a Hearing Officer’s decision if the party requesting a stay establishes that substantial harm, injury or loss could occur if a stay is not granted. The other party may file a response within fourteen (14) calendar days or the Board may request a response to a request for stay.
- C. Any stay permitted by this rule shall expire at the time the Board issues a final decision on the petition and cross-petition for review, if any.

#### 21-26 Hearing Transcript and Record

- A. Within twenty-one (21) calendar days after filing the petition for review, the petitioner shall file with the Hearing Office a request for the transcript of the hearing, or such portions of the hearing, if any, that the petitioner deems necessary and relevant for consideration by the Board.
- B. If the petitioner does not request any portion of the transcript, the petitioner shall, within twenty-one (21) calendar days after filing the petition for review, file with the Board and serve on the other party a notice that no transcript is being requested from the Hearing Office.
- C. Within fourteen (14) calendar days after the filing of a request for the transcript of the hearing or the filing of a notice that no transcript is being requested, the respondent (or cross-petitioner) may file a request for the transcript of the hearing, or such additional portions of the transcript not included in the petitioner's request with the Hearing Office.
- D. The cost of preparing the transcript or portions thereof shall be paid by the party making the request.
- E. Once the transcript is prepared, the Hearing Office shall file notice with the Board that the transcript is complete, and shall provide the parties with copies of the notice and copies of the requested transcript, upon payment of reasonable copy costs. The Hearing Office shall include a date of service with its notice.
- F. The parties may review the record at the Hearing Office and request copies of portions of the record necessary for preparation of a brief. The Hearing Office may charge reasonable copy costs.

#### 21-27 Briefs

- A. Petitioner's Brief: The petitioner's opening brief shall be filed with the Board within twenty-one (21) calendar days after the date of service by the Hearing Office of notice that the transcript is complete. The petitioner's brief shall be served on the other party on the same date that it is filed with the Board. If neither party requests a transcript of the hearing, the petitioner's brief shall be filed with the Board within twenty-one (21) calendar days after the date of service by the petitioner of notice that no transcript is being requested from the Hearing Office. The petitioner's brief shall be limited to 20 pages total, typewritten, text double-spaced, Times New Roman 12-point font, using only 8½ x 11-inch paper. The petitioner's brief shall separately address each ground for the petition; shall be supported by appropriate citations to the transcript and the record, if any; and shall include a brief statement of the relief sought by the petitioner.

- B. 1. Answer Brief: An answer brief shall be filed by the other party (“respondent”) with the Board within twenty-one (21) calendar days after the date of service of the petitioner’s brief. The answer brief shall be served on the other party on the same date that it is filed with the Board. The answer brief shall be limited to 20 pages total, typewritten, text double-spaced, Times New Roman 12-point font, using only 8½ x 11-inch paper. The answer brief should contain a response to each argument contained in the petitioner’s brief and, if the answer brief cites to additional portions of the transcript or the record, shall include appropriate citations from the transcript and the record, if any.
2. Cross-Petition for Review Answer Brief: If the respondent has also filed a cross-petition for review, the respondent’s answer brief shall also separately address each ground for the cross-petition; shall be supported by appropriate citations to the transcript and the record, if necessary; and shall include a brief statement of the relief sought by the respondent. The respondent must file its cross-petition for review answer brief with the Board within twenty-one (21) calendar days after the date of service of the petitioner’s brief, with a copy served on the other party on the same date.
- C. Reply Briefs: The parties are expected to fully address all issues in the petitioner’s opening brief, the answer brief, and the cross-petition for review answer brief (if there is a cross-petition for review).
1. If a cross-petition for review is filed and arguments supporting the cross-petition are included in the cross-petition for review answer brief, the petitioner may file a reply brief which shall contain only a response to each argument advanced in support of the cross-petition and contained in the cross-petition for review answer brief. The reply brief to a cross-petition for review answer brief, if any, shall be filed within twenty-one (21) calendar days after the date of service of the cross-petition for review answer brief. Reply briefs under this subparagraph are limited to twenty (20) pages total, typewritten, text double-spaced, Times New Roman 12-point font, using only 8½ x 11-inch paper.
2. If no cross-petition for review is filed, the petitioner may file a reply brief to address arguments raised in the answer brief. The reply brief to an answer brief, if any, shall be filed within seven (7) calendar days after the date of service of the answer brief. Reply briefs under this subparagraph are limited to five (5) pages total, typewritten, text double-spaced, Times New Roman 12-point font, using only 8½ x 11-inch paper.
3. No additional briefs shall be permitted from either party unless requested by the Board.
- D. Extensions of Time to File Brief: If either party needs an extension of time to file a brief, the party may file a motion with the Board supported by good cause. An unopposed motion for an extension shall be deemed granted without further action by the Board. If the motion is opposed, the other party may file an

objection within three (3) calendar days of the motion. The Board will issue an order either granting, denying or modifying the requested extension.

- E. Oral Argument: The Board may order oral argument when it determines oral argument is necessary.

#### 21-28 Late Filings

A party's failure to comply with the filing and service deadlines regarding petitions for review, cross-petitions for review, and briefs may be grounds for dismissal of the party's appeal. The Board may refuse to accept late filings sua sponte or upon motion of the other party.

#### 21-29 Decision by the Board

Upon submission of the briefs and upon the conclusion of oral argument, if any, the Board shall issue a decision in writing, affirming, modifying, or reversing the Hearing Officer's decision. The Board may also remand part or all of the appeal for further action by the Hearing Officer. The Board shall issue its decision within sixty-three (63) calendar days after the date on which the final brief is submitted or oral argument is held, whichever is later. The binding effect of a decision is not affected by late issuance. The decision shall contain findings on each issue necessary to resolve the petition for review and cross-petition for review, if any, and shall be binding upon all parties. A decision of the Board shall be concurred on by at least three (3) members of the Board, whose names shall be included in the decision. The decision rendered by the Board shall constitute the final decision for purpose of requesting judicial review.