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THE CITADEL
The Military College of South Carolina
171 Moultrie Street
Charleston, SC 29409

GENERAL ORDER
NUMBER 11-111

1 May 2024

GRIEVANCE AND APPEALS

1. PURPOSE

The General Assembly finds that harmonious relations between public employers and public employees are a necessary and most important factor in the effective and efficient operation of government, and that a proper forum for the understanding and resolution of employee grievances will contribute to the establishment and maintenance of harmony, good faith, and the quality of public service. The General Assembly also recognizes that the most effective and cost efficient means of resolving grievances occurs at the lowest level, and state agencies are encouraged to use methods of alternative dispute resolution to avoid a grievance hearing and further litigation. It is for the protection and in the interests of both the employee and the agency via a neutral method of dispute resolution and fair administrative review, that the "State Employee Grievance Procedure Act" (the Act), was enacted.

2. REFERENCE

S.C. Code of Laws § 8-17-310 et. seq.

3. DEFINITIONS

As used in this Grievance Procedure, unless the context clearly indicates otherwise, the following words or phrases shall mean:

- A. Calendar days: The sequential days of a year. The time shall be computed by excluding the first day and including the last day. If the last day falls on a Saturday, Sunday, or legal holiday, it must be excluded.
- B. Class: A group of positions sufficiently similar in the duties performed, degree of supervision exercised or received, minimum requirements of education, experience or skill, and the other characteristics that the same state class title and the same state salary range are applied to each position in the group by the Division of State Human Resources.
- C. Covered employee: A full-time or part-time employee occupying a part or all an established full-time equivalent (FTE) position who has completed the probationary period and has a "successful" or higher overall rating on the employee's performance evaluation and who has grievance rights. Instructional

personnel are covered upon the completion of one academic year. If an employee does not receive an evaluation before the official review date, the employee must be considered to have performed in a satisfactory manner and be a covered employee. This definition does not include employees in positions such as temporary, temporary grant, or time-limited employees who do not have grievance rights.

- D. Demotion: The assignment of an employee by the appointing authority from one established position to a different established position having a lower state salary range.
- E. Full-Time Equivalent (FTE): A value expressing a percentage of time in hours and of funds related to a particular position authorized by appropriations acts enacted by the General Assembly.
- F. Grievance: A complaint filed by a covered employee or the employee's representative regarding an adverse employment action designated in Section 8-17-330 of the SC Code of Laws taken by the College.
- G. Mediation: An alternative dispute resolution process whereby a mediator who is an impartial third party acts to encourage and facilitate the resolution of a dispute without prescribing what it should be. The process is informal and non-adversarial with the objective of helping the disputing parties reach a mutually acceptable agreement.
- H. Probationary employee: A full-time or part-time employee occupying a part or all of an established FTE position in the initial working test period of employment with the State of twelve months' duration for non-instructional personnel or of the academic year duration for instructional personnel. An employee who receives an unsatisfactory performance appraisal during the probationary period must be terminated before becoming a covered employee.
- I. Promotion: An employee's change from a position in one class to a position in another class having a higher state salary range. Failure to be selected for a promotion is not an adverse employment action that can be considered as a grievance or appeal.
- J. Punitive Reclassification: The assignment of a position in one class to a different lower class with the sole purpose to penalize the covered employee.
- K. Reassignment: The movement within an agency or an employee from one position to another position having the same state salary range, or the movement of a position within the College which does not require reclassification.
- L. Reclassification: The assignment of a position in one class to another class which is the result of a natural or an organizational change in duties or responsibilities of the position.

- M. Reduction in force: A determination by the College to eliminate one or more filled positions in one or more organizational units within the College due to budgetary limitations, shortage of work, organizational changes, or outsourcing/privatization.
- N. Suspension: An enforced leave of absence without pay pending investigation of charges against an employee or for disciplinary purposes.
- O. Temporary employee: A full-time or part-time employee who does not occupy an FTE position, whose employment is not to exceed one year, and is not a covered employee.
- P. Termination: An action taken by the College against an employee to separate the employee involuntarily from employment.
- Q. Transfer: The movement to a different agency of an employee from one position to another position having the same state salary range, or the movement of a position from one agency to another agency, which does not require reclassification.

4. POLICY

- A. Throughout this grievance procedure the words "grievance" and "complaint" are used interchangeably and carry the same meaning. A covered employee may file a grievance or an appeal concerning only the following employment actions:
 - 1. Terminations;
 - 2. Suspensions;
 - 3. Involuntary Reassignments in excess of thirty (30) miles from the prior work station;
 - 4. Demotions;
 - 5. Punitive Reclassifications but only when the agency, in case of a grievance, or the State Human Resources Director, in the case of an appeal, determines that there is a material issue of fact that the action was solely done to penalize the covered employee.
 - 6. Reclassifications, reassignments, and transfers within the same state salary range are not considered to be grievable or appealable.
 - 7. Promotions in instances where the agency, or in the case of appeals, the State Human Resources Director, determines that there is a material issue of fact as to whether or not an agency has considered a qualified covered employee for a position for which the employee formally applied or would have applied if the employee had known of the promotional opportunity. When an agency promotes an employee one organizational level above the promoted employee's former level, however, that action is not a grievance or appeal for any other qualified covered employee. Failure to be selected for a promotion is not considered an adverse employment action which can be considered

grievable or appealable;

8. Salary Decrease based on performance as the result of an Employee Performance Management System (EPMS) evaluation; and
9. Reduction in Force is considered as a grievance only if the agency, or as an appeal if the State Human Resources Director, determines that there is a material issue of fact that the agency inconsistently or improperly applied its reduction in force policy or plan.

B. The Following Actions Do Not Constitute a Basis for a Grievance or Appeal

1. A covered employee who voluntarily resigns or voluntarily accepts a demotion, reclassification, transfer, reassignment, or salary decrease shall waive any and all rights to file a grievance or an appeal concerning such actions and the covered employee can rescind such voluntary actions only if the agency head or the agency head's designee agrees;
2. A covered employee who is promoted, reclassified to a higher salary range, or moved to an unclassified position with a higher rate of pay and subsequently demoted prior to serving six months of satisfactory service completing the trial period in the class with the higher salary range or higher rate of pay shall not have the right to file a grievance or an appeal concerning the demotion, unless such demotion is to a class with a lower salary range or lower rate of pay than the position in which the employee was serving prior to promotion, reclassification, or movement to an unclassified position with a higher rate of pay;
3. A covered employee who is promoted or moved to an unclassified position with a higher rate of pay and subsequently receives a reduction in pay prior to completing the trial period in the position with the higher salary range or higher rate of pay shall not have the right to file a grievance or an appeal concerning the reduction in pay, unless the action results in a lower rate of pay than that which the employee was receiving prior to the promotion or movement to an unclassified position with a higher rate of pay;
4. A covered employee who receives an additional job duties or responsibilities salary increase, and subsequently has the additional job duties or responsibilities which justified the salary increase taken away prior to completing six months of service with the additional job duties or responsibilities, shall not have the right to file a grievance or an appeal concerning a salary reduction equivalent to the amount of the additional job duties or responsibilities increase.

C. Protection of Employees:

No employee shall be disciplined or otherwise prejudiced in employment for exercising rights, testifying, or providing information in accordance with the grievance and appeals procedure. The Act provides that a covered employee has

the right during the grievance and appeal process to a representative, which may include legal counsel. If the covered employee chooses to exercise the right of legal counsel, it shall be at his expense.

C. Informal Complaints:

Prior to filing a formal grievance, the covered employee may first attempt to resolve the matter informally with his immediate supervisor. This matter may be presented verbally or in writing. However, this is merely an informal attempt to resolve the matter and cannot be substituted for the requirements of Step One in the following procedure.

D. Formal Complaints:

If the informal procedure does not produce a result satisfactory to the complainant, or if the complainant does not desire to follow the informal procedure, a grievance may be filed.

E. Time Limit to Initiate a Grievance:

The covered employee filing the grievance must comply with the time limits established in each step of the grievance procedure. Failure by the covered employee to comply with the internal time periods in the agency grievance procedure constitutes a failure to exhaust administrative remedies and waives the covered employee's right to further continue the grievance.

If the matter was not resolved informally with the covered employee's immediate supervisor, the covered employee must notify the agency's Human Resources Office in writing to initiate a formal grievance. The covered employee must initiate the grievance with the Citadel's Human Resources Office within fourteen (14) calendar days of the effective date of the grievable action or fourteen (14) calendar days from when the employee is notified of the action, whichever is later.

The internal time periods of the agency grievance procedure and the 45 calendar day period for action by the agency may not be waived except by mutual written agreement of both parties. Failure by the College to issue a final decision within this forty-five (45) calendar day period is considered an adverse decision. This failure to issue a final decision allows the covered employee to proceed with an appeal to the State Human Resources Director after 45 calendar days, but no later than fifty-five (55) calendar days from the initial date the grievance was filed with the agency. Failure by the covered employee to file an appeal within the time periods referenced in this paragraph shall constitute a waiver of the right to appeal.

F. Procedure

Step 1

1. A formal grievance must in writing and received (or if mailed, postmarked) by the agency's Chief Human Resources Officer using the Employee Grievance Procedure Form within fourteen (14) calendar days of the effective date of the grievable action, or fourteen (14) calendar days from when the employee is notified of the action, whichever is later.

The agency's Chief Human Resources Officer or other designated official shall initially review the grievance to determine whether the matter involves a grievance as defined by the Act. The agency's Chief Human Resources Officer or other designated official may conduct appropriate investigations and fact findings as he may consider necessary to make this determination. If it is determined that the matter is not grievable, the covered employee shall be so advised in writing by the Agency Director or a designee, normally within five (5) calendar days of receipt of the grievance. Such determination shall be a final decision within the agency which may be appealed to the State Human Resources Director.

If it is determined that the matter is grievable, the agency's Chief Human Resources Officer or other designated official will contact the covered employee and the appropriate agency representative(s), normally within five (5) calendar days of receipt of the grievance, to inform them the issue can be heard under this grievance procedure and inquire whether or not they desire to participate in voluntary mediation. Both parties must make a written decision to the agency's Chief Human Resources Officer within two (2) calendar days of this notification. Failure by either party to respond timely to this notification is deemed a refusal to participate in the voluntary mediation.

Any initial determination by the agency's Chief Human Resources Officer or other designated official that the matter may be grieved shall only entitle the covered employee to have the matter considered in accordance with this grievance procedure and shall in no way be construed to be an adjudication of the merits of the grievance.

Step 2

A. With Mediation

When the covered employee and the agency representative(s) both agree in writing to participate in voluntary mediation, the agency's Chief Human Resources Officer or other designated official will schedule a mediation conference to occur within five (5) calendar days and make the necessary arrangements for acquiring a mediator.

The mediator will serve as an impartial third party who will encourage and facilitate a resolution to the dispute without advising what the result should be. The mediation conference(s) will be confidential and limited to the parties and their representatives. Other persons may attend with the permission of the mediator and the other party. The mediator may not be

compelled by subpoena or otherwise to divulge any records or discussions or to testify in regard to the mediation conference in any adversary proceeding or judicial forum. If the parties agree to settle the matter, the mediator will assist in drafting a mediation agreement for the parties to review and sign. The mediator may share terms of the settlement agreement with the agency's designated officials who need to finalize and assist in implementing the agreement.

If the matter is not settled within eight (8) calendar days of the initial mediation conference, the mediator will inform the agency's Chief Human Resources Officer or other designated official that settlement has not occurred. The Chief Human Resources Officer or other designated official will then schedule a conference to occur between the covered employee's next level supervisor and the covered employee within five (5) calendar days. At the conference with the covered employee's next level supervisor, the covered employee will have an opportunity to present his position regarding the grievance. The next level supervisor may conduct appropriate investigations and fact findings to determine whether to accept, reject, or modify the disciplinary action taken against the covered employee. The covered employee will be advised of his next level supervisor's decision in writing within five (5) calendar days of the conference.

B. Without Mediation

If the matter is grievable and the covered employee or the agency submits a written decision not to participate or fails to respond timely concerning voluntary mediation, the agency's Chief Human Resources Officer or other designated official will promptly schedule a conference to occur between the covered employee's next level supervisor and the covered employee, normally within five (5) calendar days. At the conference with the covered employee's next level supervisor, the covered employee will have an opportunity to present his position regarding the grievance. The next level supervisor may conduct appropriate investigations and fact findings to determine whether to accept, reject, or modify the disciplinary action taken against the covered employee. The covered employee will be advised of his next level supervisor's decision in writing within five (5) calendar days of the conference.

Step 3

2. To continue the grievance, the covered employee must notify the college president or a designee in writing. The request to continue the grievance must be received (or, if mailed, postmarked) within five (5) calendar days after receiving the Step One decision. The college president or a designee must promptly schedule and conduct a conference with the covered employee, normally within five (5) calendar days. The covered employee will be provided an opportunity at this time to present his position regarding the grievance. The college president or a designee may conduct appropriate investigations and

fact findings to determine whether to accept, reject, or modify the disciplinary action taken against the covered employee. The college president or a designee must advise the covered employee of the decision in writing within five (5) calendar days of the conference. This decision will be final within the agency.

Failure by the agency to issue a final decision within forty-five (45) calendar days from date the grievance is initially filed with the agency is considered an adverse decision.

G. Appeal to the State Human Resources Director

The Act also provides for an appeal of a grievance beyond the agency to the State Human Resources Director after all administrative remedies to secure relief within the agency have been exhausted. A covered employee has not exhausted administrative remedies to secure relief within the agency until the agency's internal grievance process is completed or the forty-five (45) calendar days provided for the agency to issue a decision has elapsed, whichever occurs sooner.

Any covered employee may appeal the decision of the college president or a designee. Such appeal must be in writing and submitted to the State Human Resources Director within ten (10) calendar days of receipt of the agency's final decision or fifty-five (55) calendar days from the initial date the grievance was filed within the agency, whichever occurs later. As to the fifty-five (55) calendar days, the Act provides that a covered employee may appeal directly to the State Human Resources Director in the event the agency does not complete its entire internal grievance procedure within forty-five (45) calendar days from the time the grievance is initially filed within the agency. Failure by the agency to issue a final decision within this forty-five (45) calendar day period is considered an adverse decision and allows the covered employee to proceed with an appeal to the State Human Resources Director after forty-five (45) calendar days, but no later than fifty-five (55) calendar days from the initial date the grievance was filed within the agency.

Failure by the covered employee to file an appeal within the time periods referenced in this section shall constitute a waiver of the right to appeal.

The time periods related to filing an appeal with the State Human Resources Director may not be waived.

6. NOTES

A. Dates of official enactment and amendments:

Approved by Vice President for Finance on 1 May 2024

B. Responsible Department:

Human Resources

C. Responsible Official:

Vice President of Human Resources

D. Cross References

None

7. RESCISSION

All previous versions of the "Grievance and Appeals" policies are rescinded.

8. REVIEW

Review this policy on a biennial basis.

FOR THE PRESIDENT:

OFFICIAL

LEAH SCHONFELD
Colonel, SCM
Vice President of Human Resources