

**RULES  
OF  
THE TENNESSEE DEPARTMENT OF HUMAN RESOURCES**

**CHAPTER 1120-11  
APPEALS**

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**1120-11-.01 APPEAL.**

- (1) A preferred service employee who is dismissed, involuntarily demoted, or suspended may file an appeal concerning the merits of the disciplinary action.
- (2) An executive service employee does not have standing to file an appeal under this chapter.

**Authority:** T.C.A. §§ 8-30-104, 8-30-105, and 8-30-318. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012. Amendments filed January 18, 2023; effective April 18, 2023.

**1120-11-.02 RESPONSIBILITY.**

- (1) The Commissioner is responsible for providing and maintaining the basic standards and guidelines for implementing this chapter.
- (2) Appointing authorities are responsible for the proper implementation of this chapter throughout their respective agencies and are responsible for ensuring that all employees and supervisors are made aware of the provisions of this chapter.
- (3) The Appointing Authority shall notify an employee of the appeal process, if applicable, and relevant.

**Authority:** T.C.A. §§ 8-30-104, 8-30-105, and 8-30-318. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012. Amendments filed February 7, 2017; effective May 8, 2017.

**1120-11-.03 BASIC STANDARDS.**

- (1) An employee who files an appeal under this chapter must do so no later than fourteen (14) calendar days after the date the employee receives, or by the exercise of reasonable diligence should have become aware of, written notice of a dismissal, involuntary demotion, or suspension. If an employee fails to file an appeal within the fourteen (14) calendar day period, the ability to appeal as defined in this chapter lapses and is deemed to have been waived in its entirety by the employee. For purposes of tolling, all references to days throughout this chapter are considered calendar days, excluding State holidays.

(Rule 1120-11-.03, continued)

- (2) An appeal is considered filed when the Appointing Authority, the Commissioner, or the Board, depending on whether the appeal is being made under Step I, II or III as provided in Rule 1120-11-.04, receives a written or electronic copy of the appeal. If a physical copy of the appeal is mailed to the agency, then the timeliness of the appeal must be determined by the date postmarked on the envelope.
- (3) If the term of the suspension is one (1) or two (2) days, the ability to appeal is limited to an appeal to the Appointing Authority under Step I and the Commissioner under Step II as provided in this chapter. An employee shall not be eligible to appeal a one or two day suspension to the Board.
- (4) An appeal filed under this chapter shall identify the following:
  - (a) The employment action taken against the employee;
  - (b) A statement detailing why the discipline issued was in error and should be overturned or reduced; and
  - (c) The corrective action sought by the employee.
- (5) Appeal discussions held during the scheduled off-duty hours for an employee, witness, or representative shall be considered the same as hours worked, including overtime if applicable. Employees who are required to appear as witnesses or representatives shall not be required to use leave for such periods and shall be reimbursed for travel and other expenses in accordance with the state's comprehensive travel regulations.
- (6) All decisions rendered in accordance with this chapter shall be in writing and communicated as outlined herein.
- (7) Written communication shall be considered received upon actual receipt as indicated by signature if hand delivered or three (3) days after a decision is sent via certified mail, return receipt requested to the employee's legal residence.
- (8) When awarding back pay pursuant to an order of reinstatement, the award shall be offset by income earned from alternative employment if earned during the employee's normal state working hours when employed by the state. Additionally, awards of back pay may be offset by unemployment insurance payments received. Any remedy granted under this chapter must not extend back more than thirty (30) calendar days before the appeal was filed.
- (9) If an employee is reinstated at Step I, II, or III, the agency must reinstate the employee, along with any back pay and/or leave, within thirty (30) calendar days. An exception exists if the agency or employee appeals the decision to Step II or Step III. In this case, the reinstatement of position, leave and/or award of back pay will effectively remain in a pending status until a Step II Appeal Decision has been issued or a final order has been rendered at Step III, depending on the specific situation.
- (10) All agencies, commissions, and other entities subject to the requirements of this chapter are responsible for entering information about each appeal received in an online database as provided by the Department of Human Resources. Such entries must be fully completed and submitted on the day the decision was issued, or, in the event a decision was not issued, by the day a decision should have been issued, pursuant to T.C.A. § 8-30-318.

**Authority:** T.C.A. §§ 8-30-104, 8-30-105, 8-30-318, and 8-30-407. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.). Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012.

(Rule 1120-11-.03, continued)

*Amendments filed February 7, 2017; effective May 8, 2017. Amendments filed May 17, 2019; effective August 15, 2019. Amendments filed January 18, 2023; effective April 18, 2023.*

**1120-11-.04 PROCEDURAL STEPS IN APPEAL.** There shall be three (3) steps in the appeal process as follows:

- (1) Step I – Appointing Authority Level
  - (a) The employee submits a written appeal to the Appointing Authority within fourteen (14) calendar days after the date the employee receives written notice of a dismissal, involuntary demotion, or suspension. The written appeal must detail why the discipline issued was in error and should be overturned or reduced, and include any relevant documentation.
  - (b) The Appointing Authority or designee shall conduct any investigation considered necessary, meet with the employee in person, or through virtual telecommunication means, if applicable, along with the supervisor who issued the discipline or an agency representative, and issue a written decision not later than twenty (20) calendar days after the date the Appointing Authority receives the appeal. Agencies must ensure that the supervisor or agency representative has sufficient knowledge to participate in the Step I Appeal Discussion.
  - (c) Prior to the Step I Appeal Discussion, the Appointing Authority or designee must make all reasonable efforts to provide to the employee a copy of any and all documents or other evidence in the Appointing Authority or designee's possession that is relative to the discussion, including, but not limited to, reports, videos, and records. Where not practicable, or subject to confidentiality provisions, the employee shall be provided the documents at the time of the Step I Appeal Discussion and given a reasonable amount of time to review during the discussion. Any documents or evidence not provided to the employee prior to, or at, the Step I Appeal Discussion, must not be considered by the Appointing Authority or designee for purposes of issuing a decision, except for the allowance of information below in subparagraph 1120-11-.04(d). If applicable, the employee must acknowledge in writing that the employee was presented with the evidence.
  - (d) Prior to issuing a Step I Appeal Decision, the Appointing Authority or designee may independently collect new evidence regarding a factual issue raised during the Step I Appeal Discussion. If independent information is collected by the Appointing Authority or designee between the discussion and the issuance of the Step I Appeal Decision, the agency shall provide the employee with a copy of the information as soon as practicable. The employee shall have the opportunity to respond with a written statement to the information provided within three (3) business days. The Appointing Authority or designee shall not issue a Step I Appeal Decision until the employee has been afforded the opportunity to respond to any new evidence or information, unless doing so violates the twenty (20) calendar day timeframe.
  - (e) For purposes of any proceeding under this rule, information or evidence that is part of a criminal investigation or prosecution by any law enforcement agency, or is otherwise deemed confidential under existing law, shall not be provided to the employee in advance of the discussion. Provided, however, that such information will be made available for the employee to review during the discussion or other fixed time, if such information is to be relied upon in issuing the decision. Agencies may also provide a substantive summary of otherwise confidential information, consistent with state laws involving criminal investigation or prosecution by any law enforcement agency.

(Rule 1120-11-.04, continued)

- (f) The Appointing Authority shall have full authority to overturn, reduce, or amend the disciplinary action based on information gathered at the Step I Appeal Discussion or information obtained afterwards, including reinstatement of leave and awards of back pay, if appropriate.
  - (g) If the Appointing Authority does not issue a Step I Appeal Decision within twenty (20) calendar days after the Appointing Authority receives the appeal, the employee may appeal to the Commissioner by filing the appeal in accordance with Step II. However, should the agency issue a Step I Appeal Decision, albeit late, it may be used at Step II, consistent with requirements listed in subparagraph 1120-11-.04(2)(c) of this rule.
  - (h) The presence of observers is in the discretion of the Appointing Authority or designee. Representatives and attorneys may not represent the parties at the Step I Appeal. However, if the agency has more than one (1) representative actively participating at the discussion, excluding the Appointing Authority or designee, the employee may have a non-lawyer representative participate in the discussion.
- (2) Step II – Commissioner of the Department of Human Resources
- (a) If the Appointing Authority does not find in favor of the employee, the employee may appeal to the Commissioner by submitting a written appeal and all relevant documentation no later than fourteen (14) calendar days after receipt of the Appointing Authority's Step I Appeal Decision, or, in the event a Step I Appeal Decision was not issued, from the date the Step I Appeal Decision was due, via email to [DOHR.Step2Appeals@tn.gov](mailto:DOHR.Step2Appeals@tn.gov), or to:
 

Commissioner  
Tennessee Department of Human Resources  
Seventeenth Floor, William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Boulevard  
Nashville, TN 37243
  - (b) It is the duty of the employee to provide written argument as to why the Step I Appeal Decision was in error and ought to be overturned or reduced. An employee failing to provide such information to the Commissioner within the allotted timeframe shall be considered in default and forfeits the ability to appeal to Step III.
  - (c) The Commissioner or designee shall review the appeal, any relevant accompanying documentation, and the Appointing Authority's decision, if any. The Commissioner shall issue a decision, in writing, not later than thirty (30) calendar days after the date the appeal was filed with the Commissioner. Prior to issuing a Step II Appeal Decision, the Commissioner may independently obtain new evidence or information regarding factual issues raised during the Step I or II Appeal. If independent information is collected by the Commissioner, the Commissioner must provide the employee with a copy of the information as soon as practicable. If the information obtained is confidential, the employee shall be allowed to view the information as soon as practicable, but will not be provided with a hard copy. The employee shall have the opportunity to respond with a written statement to the information provided within three (3) business days. The Commissioner shall not issue a decision until the employee has been afforded the opportunity to respond to any new evidence or information, unless doing so violates the thirty (30) day timeframe.
  - (d) If the Commissioner does not issue a decision within thirty (30) calendar days after the Commissioner receives the appeal, the agency or the employee may appeal to the Board in accordance with Step III. However, if a Step II Appeal Decision is issued,

(Rule 1120-11-.04, continued)

albeit late, it may be used at Step III, consistent with requirements listed below in paragraph 1120-11-.04(3).

(3) Step III – Board of Appeals

- (a) The employee or state agency may appeal in writing to the Board of Appeals not later than fourteen (14) calendar days after the date the employee, or in the case of a state agency, the state agency receives written notice of the action taken by the Commissioner. In the event the Commissioner does not issue a timely Step II Appeal Decision, the employee or agency will have fourteen (14) calendar days to appeal from the date the decision was otherwise due. The written appeal may be sent via email to [DOHR.Step3Appeals@tn.gov](mailto:DOHR.Step3Appeals@tn.gov), or mail to:

Board of Appeals  
c/o Tennessee Department of Human Resources  
Seventeenth Floor, William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Boulevard  
Nashville, TN 37243

- (b) An appeal by either party shall stay the Step II Appeal Decision and the original disciplinary action will remain in effect until a final determination of the Board.
- (c) Within ten (10) calendar days after the receipt of the appeal, the Administrative Law Judge (ALJ) assigned to assist the Board shall determine whether all procedural requirements were completed properly and in a timely manner. If a procedural requirement has not been met, the appeal shall be dismissed. If the procedural requirements have been met, the Board shall conduct proceedings in accordance with the Uniform Administrative Procedures Act as modified herein. The appealing party, whether it be the employee or state agency, bears the burden of proof during any Board of Appeals proceeding.
- (d) For purposes of this section, procedural requirements shall be construed to mean the procedural requirements at Step III of the appeal process.
- (e) Each hearing under this chapter shall occur before a panel of at least three (3) members of the Board, assisted by one (1) ALJ. The ALJ shall assist at the hearing by ruling on questions of the admissibility of evidence, swearing-in witnesses, advising members of the Board on the law of the case, and ensuring that the proceedings are carried out in accordance with this chapter and other applicable law. An ALJ, upon timely motion, may decide any procedural question of law.
- At no time shall the ALJ take part in the determination of a question of fact.
- (f) The Board shall issue its final decision in each proceeding no later than one hundred twenty (120) calendar days after the date of the filing of the appeal with the Board.
- (g) The Board shall have full authority to overturn, reduce, or amend the disciplinary action based on the information submitted for consideration, including reinstatement of leave and awards of back pay, if appropriate.

- (4) In order to ensure that the Board issues its final decision no later than one hundred twenty (120) calendar days after the date of the filing of the appeal, the following conditions shall be imposed on hearings before the Board:

(Rule 1120-11-.04, continued)

- (a) The parties shall participate in a pre-hearing conference no later than twenty (20) calendar days after the filing of the appeal. At the pre-hearing conference, a hearing date shall be set.
  - (b) All discovery shall be completed no later than sixty (60) calendar days after the filing of the appeal.
  - (c) All motions, both dispositive and non-dispositive, shall be ruled on no later than thirty (30) calendar days before the date of the hearing.
  - (d) Extensions on the deadlines provided herein are only to be granted in extraordinary circumstances and with the agreement of both parties. In any event, the granting of an extension shall not extend beyond a one hundred forty (140) calendar day time period for the Board to issue its decision. Any objections to any extension shall be noted in the Order granting or denying the extension.
  - (e) Neither party shall be entitled to file a petition for reconsideration under T.C.A. § 4-5-317.
- (5) The Board hearing shall serve as the final administrative step in the appeals procedure for Preferred Service Employees. An order is considered final upon signature by the presiding Board member. Decisions of the Board are subject to judicial review in accordance with the Uniform Administrative Procedures Act, T.C.A. Title 4, Chapter 5.
  - (6) If the employee is successful in obtaining reinstatement to a position from which the employee has been terminated, the employee shall be reinstated to a position in the county in which he or she was employed at the time of termination. The Commissioner may grant exceptions on a case-by-case basis.
  - (7) In any case in which a successful employee has been awarded reinstatement, back pay, or attorney's fees, the agency involved shall have a period of thirty (30) calendar days from the date of the order within which to provide reinstatement, back pay and/or attorney's fees. If awarded, attorney's fees must be paid in accordance with Rule 1120-11-.05.

**Authority:** T.C.A. §§ 4-5-301, et seq., 8-30-104, 8-30-105, 8-30-318, and 8-30-407. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Amendment filed October 25, 1995; effective February 28, 1996. Amendment filed May 6, 1996; effective July 20, 1996. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012. Amendments filed February 7, 2017; effective May 8, 2017. Amendments filed May 17, 2019; effective August 15, 2019. Amendments filed January 18, 2023; effective April 18, 2023.

**1120-11-.05 ATTORNEY FEES.** The Board of Appeals may, at its discretion, award reasonable fees and costs upon successful appeal to an employee's attorney in accordance with the following terms and conditions.

- (1) Attorney's fees awarded by the Board shall be awarded at the same rates established by Guidelines for the Defense of Individual Employees issued by the State of Tennessee Office of the Attorney General and Reporter.
- (2) All awards of costs shall be limited to reasonable costs actually incurred. Awards of costs for travel shall be subject to the provisions of the state's comprehensive travel regulations in effect at the time the claim is made.

(Rule 1120-11-.05, continued)

- (3) If the Board awards attorney fees, the prevailing attorney shall submit an affidavit detailing the hours of preparation, in hours and tenths of hours, the nature of services performed during such preparation, the hours of hearing time, and a complete itemized statement of costs claimed. Claims shall be submitted via email to [DOHR.Step3Appeals@tn.gov](mailto:DOHR.Step3Appeals@tn.gov), or to the following address:
- Board of Appeals  
c/o Tennessee Department of Human Resources  
Seventeenth Floor, William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Boulevard  
Nashville, TN 37243
- (4) The unsuccessful party may dispute attorney's fees and costs to the Tennessee Department of Human Resources. If the parties are unable to resolve any dispute regarding attorney's fees and costs, the parties may file a motion to the Administrative Procedures Division.
- (5) In no event shall a claim be paid which is not received by the Board of Appeals within thirty (30) calendar days of the effective date of the final order.
- (6) A designee for the Board shall review all such claims for compliance with these rules, the applicable guidelines, and the Board's decision. The designee is authorized to approve payment of such claims for any amount up to and including the amount claimed. Upon approval, the designee shall inform the party in writing and the party shall have thirty (30) calendar days in order to pay such attorney's fees/costs.

**Authority:** T.C.A. §§ 8-30-104, 8-30-105, and 8-30-318. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012. Amendments filed February 7, 2017; effective May 8, 2017. Amendments filed May 17, 2019; effective August 15, 2019. Amendments filed January 18, 2023; effective April 18, 2023.

#### 1120-11-.06 REPEALED.

**Authority:** T.C.A. §§ 8-30-104, 8-30-105, and 8-30-318. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 25, 1994. Amendment filed October 25, 1995; effective February 28, 1996. Amendment filed May 6, 1996; effective July 20, 1996. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal filed July 5, 2012; effective October 3, 2012.

#### 1120-11-.07 REPEALED.

**Authority:** T.C.A. §§ 8-30-104, 8-30-105, and 8-30-318. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Amendment filed October 25, 1995; effective February 28, 1996. Amendment filed May 6, 1996; effective July 20, 1996. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal filed July 5, 2012; effective October 3, 2012.

#### 1120-11-.08 REPEALED.

**Authority:** T.C.A. §§ 8-30-104, 8-30-105, and 8-30-318. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective

(Rule 1120-11-.08, continued)

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**1120-11-.09 REPEALED.**

**Authority:** T.C.A. §§ 8-30-104, 8-30-105, and 8-30-318. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal filed December 14, 2010; effective May 31, 2011. Repeal filed July 5, 2012; effective October 3, 2012.