



*To enhance mission performance, TSA is committed to promoting a culture founded on its values of Integrity, Innovation and Team Spirit.*

*NOTE: Pursuant to Section 101 of the Aviation and Transportation Security Act (49 U.S.C. 114(n)), this directive establishes Transportation Security Administration (TSA) policy and supersedes Federal Aviation Administration (FAA) orders, policies, guidance, and bulletins regarding Grievance Procedures issued under the FAA Personnel Management System. This directive is TSA policy and must be applied accordingly.*

**REVISION:** This revised directive cancels and supersedes TSA MD 1100.77-2, *Grievance Procedures*, dated May 15, 2009.

**SUMMARY OF CHANGES:** The definition of First Step Official has been amended to more accurately describe the management official and to be consistent with the provisions of Section 7.A.(2) of the MD. Test results and/or the scores of any/all Technical Proficiency assessments under the Performance Accountability and Standards Systems (PASS) is added under Matters Excluded in Section 6B.

1. **PURPOSE:** This directive provides TSA policy and procedures for filing a grievance.
2. **SCOPE:** The provisions of this directive apply to all TSA organizational elements, to all permanent TSA employees (including Transportation Security Officers (TSO) and non-TSOs), to TSA employees who have completed two years of continuous service on a temporary appointment of more than two years, and to employees in Transportation Security Executive Service (TSES) positions.
3. **AUTHORITIES:** Aviation and Transportation Security Act, Public Law 107-71 (ATSA).
4. **DEFINITIONS:**
  - A. Adverse Action: A suspension of any length, including indefinite suspension; a removal; or a reduction in pay band or rate of pay.
  - B. Alternative Dispute Resolution: An alternative method to traditional, formal means of resolving disputes of workplace issues by using a variety of approaches to arrive at resolution mutually acceptable to the parties.
  - C. Avenues of Redress: Procedures available to address an employee's complaint or grievance.
  - D. Day: Calendar day.
  - E. Fact-Finder: A neutral party appointed by the second step official to conduct a more formal review of the matter being grieved.
  - F. First Step Official: The management official who made the decision, took the action, or failed to take the action that the grievant is challenging. In most cases, it will be the grievant's first

line supervisor, but it could be a management official higher in the chain of command or an official outside the chain of command.

- G. Grievance: A request by an employee for personal relief in a matter of concern or dissatisfaction relating to his/her employment with TSA that is subject to the control of management.
- H. Grievance File: A file that must be established for each grievance, containing all documents related to the grievance.
- I. Grievance System: A formal process in which management adjudicates matters of employee concern or dissatisfaction relating to employment.
- J. Grievant: The employee who files a grievance.
- K. Peer Review: An alternative dispute resolution process for covered employees that engages the use of a panel, which includes peer-employees as well as management officials, to review a covered matter in which a specific remedy personal to the affected employee is requested and render a decision.
- L. Remedy: The specific personal relief directly benefiting the grievant. It may not include a disciplinary or other action affecting a third party, including the employment or reassignment of another employee.
- M. Second Step Official: A higher-level official than the First Step Official who was not involved in the issue(s) being grieved and who has the authority to resolve the matter.

## **5. RESPONSIBILITIES:**

- A. Supervisors and/or designated management officials, upon receipt of a grievance, are responsible for complying with the procedures in this directive, including responding to the grievance in writing.
- B. Employees are responsible for complying with the procedures established by this directive, including furnishing sufficient detail to clearly identify the matter being grieved, and specifying the remedy being sought.

## **6. POLICY:**

### A. General:

- (1) Except as stated in Section 6B, the grievance procedure is a formal two-step process that allows an employee to grieve matters of concern or dissatisfaction relating to his or her employment, if the matter is subject to the control of TSA management.
- (2) An employee who files a grievance shall not be subject to restraint, coercion, discrimination, or reprisal as a result of, or in connection with, having filed the grievance.

- (3) The filing of a grievance does not stay any personnel action being grieved pending final decision on the grievance.

**B. Matters Excluded:** The grievance procedure does NOT apply to the following matters:

- (1) Decisions made by other agencies or third parties, such as, courts, the Office of Personnel Management, or the Office of Workers' Compensation;
- (2) Matters for which there is another avenue of redress, including but not limited to:
  - (a) Appeals to the Merit Systems Protection Board (MSPB);
  - (b) Appeals to the TSA Disciplinary Review Board (DRB);
  - (c) Decisions of the TSES Performance Review Board (PRB);
  - (d) Concerns that allege prohibited discrimination which are processed in accordance with TSA's discrimination complaint procedure administered by the Office of Civil Rights and Liberties (OCRL); and
  - (e) Complaints which have been filed with the Office of Special Counsel (OSC);
- (3) Retirement, or life or health insurance;
- (4) Adjudication of the results of personnel security investigations and suitability determinations made by the Office of Security;
- (5) Oral or written counseling(s);
- (6) Progress reviews (i.e., quarterly and/or mid-year) under the TSA performance management system;
- (7) Performance Improvement Plans (PIP) that put employees on notice of deficient or questionable performance;
- (8) The content of performance elements and standards;
- (9) Notices proposing a disciplinary or adverse action;
- (10) Non-selection for promotion or reassignment from a list of eligibles;
- (11) Failure to receive a non-competitive promotion or reassignment when documented evidence exists that policies and procedures have been appropriately applied;

- (12) Reassignment without loss in band or rate of pay from one position to another. This includes a reassignment from a supervisory to a non-supervisory position, within or outside the local commuting area, in connection with a reorganization and/or realignment;
- (13) Removal from a supervisory or managerial position during the supervisory or managerial probationary period;
- (14) Change of position or organizational title;
- (15) Involuntary Workforce Reduction;
- (16) Failure to receive a performance or incentive award when documented evidence exists that policies and procedures have been appropriately applied;
- (17) Monetary amount of a performance or incentive award;
- (18) Non-adoption of a suggestion;
- (19) Shift schedules or shift bidding programs;
- (20) The content of any law, rule, regulation, policy, instruction, or directive; although the TSA's implementation as it relates to an individual employee may be grieved by that employee;
- (21) The termination or expiration of a time-limited (i.e., temporary or term) appointment, or promotion;
- (22) Separation or termination of employment during the trial or probationary period;
- (23) Furlough of any length; and
- (24) The test results and/or the scores of any/all Technical Proficiency assessment, including a Practical Skills Evaluation (PSE) assessment, under PASS. However, if the affected employee demonstrates that the assessment is flawed, (e.g. an equipment malfunction or the content material is not aligned with the applicable security screening standard operating procedures), the matter may be grieved.

**C. Relationship with Alternative Dispute Resolution:**

- (1) An employee who has a matter of concern or dissatisfaction covered under the grievance system may request to use less formal methods to resolve the complaint, including methods of alternative dispute resolution made available by TSA.
- (2) As an *alternative* to the grievance procedures set forth herein, covered employees may seek Peer Review of any matter that may be grieved pursuant under this directive. A covered employee may choose between filing a grievance or requesting Peer Review, but not both.

Once the choice is made, the matter cannot be pursued through any other process. Refer to [HCM 771-3, Peer Review](#) for additional information.

- (3) Use of an alternative dispute resolution process does not automatically extend the time limit for pursuing a matter under the grievance procedure. Therefore, if an employee believes that he/she may subsequently file a grievance, the employee should request an extension of time, from the first step official, in writing, within the normal time period for filing the grievance (15 calendar days).

**D. Representation:**

- (1) The grievant may have a representative of his or her choosing assist in presenting the grievance if a meeting is held with the first or second step official.
- (2) The grievant must inform the grievance official(s), in writing, of the name of the representative, with the representative's title and contact information (address/phone number), and if employed by TSA, the representative's work location.
- (3) The grievance official may deny the grievant's choice of representative if the representation presents a conflict of interest or position, or if the representative is another employee and the employee's release from duty conflicts with operational needs.
- (4) If the representative is a TSA employee, it is their responsibility to obtain advance approval for any release from duty to present a grievance or to represent an employee in a grievance at either step of the procedure. Official time is available only for attendance at meetings to present grievances.
- (5) If an employee designates a representative, all written communication between management and the employee will include a copy for the representative.
- (6) Refer to [TSA MD 1100.63-3, Employee Representation](#), for additional information.

**E. Time Limits:** Grievances are considered timely filed when they are hand-delivered, postmarked, faxed, or e-mailed to the appropriate official on or before the due date.

**7. PROCEDURES:**

**A. First Step:**

- (1) An employee who wishes to grieve a matter under the grievance procedure must file a written grievance with the first step official within 15 days of the action or decision being grieved or within 15 days of when the grievant first learned or may reasonably have been expected to learn of the decision or action. The first step official may waive the time limit on a showing of unusual circumstances. A first step official's decision not to waive the time limit is not grievable. [TSA Form 1115, Grievance Form](#) may be used when filing a grievance.

- (2) The first step official is the management official who made the decision, took the action, or failed to take the action that the grievant is challenging. In most cases, it will be the grievant's supervisor, but it could be a management official higher in the chain of command or an official outside the chain of command.
- (3) The grievance must include a statement of:
  - (a) the action or matter being grieved;
  - (b) the reasons and any supporting documentation for the grievance;
  - (c) the remedy being sought; and
  - (d) if the matter has already been raised in another forum.
- (4) The first step official has 15 days to respond, in writing, to the grievance. If the first step official does not have the authority to resolve the matter, he/she must refer it to the appropriate management official who can resolve it, and that person will then be the first step official. The grievant should be notified, in writing, when the grievance has been referred to another management official.
- (5) The first step official may, at his or her discretion, meet with the grievant to obtain additional information or to explore possible resolution of the grievance.
- (6) The first step decision will be in writing and will state the decision and provide reasons for that decision. If the employee submitted [TSA Form 1115](#), the first step official must complete and return the form to the employee along with his/her decision.
- (7) If the first step official denies the grievance in whole or in part, the written decision must advise the grievant that he/she may advance the grievance to the second step. The notice must provide the name and address of the second step official and state the 15 day time limit for advancing the grievance to the second step.
- (8) If the first step official does not issue a decision within 15 days of receipt of the grievance, the grievant may proceed to the second step.

**B. Second Step:**

- (1) The second step official is a higher-level official than the first step official and, in most cases, is the first step official's immediate supervisor. He/she must have the authority to resolve the grievance and must not have been involved in the decision or action that gave rise to the grievance, or in the first step grievance decision.
- (2) The grievant must file with the second step official within 15 days after receiving the first step decision, or after 15 days of when the first step grievance decision was due, if no first step decision was received. The second step official may waive the time limit on a showing

of unusual circumstances. A second step official's decision not to waive the time limit is not grievable.

- (3) The second step grievance must be in writing, must include a copy of the original grievance, the date the first step grievance was filed, and a copy of the first step decision or, if applicable, a statement that no first step decision was received.
- (4) If the second step official does not have the authority to resolve the grievance, or has been directly involved in the matter being grieved or in the first step grievance decision, the second step official must refer the grievance to another second step official. That other second step official may be a peer of the second step official, but not a subordinate; or may be a higher level official either inside or outside the local airport/office.
- (5) The grievance will normally be resolved based on the written record, but the second step official may, at his or her discretion, meet with the grievant and/or may personally or through a fact-finder conduct an informal inquiry to ascertain sufficient information necessary to make a decision.
- (6) A fact finder conducts an inquiry which may consist of securing documentary evidence, conducting personal interviews, convening a group meeting, a combination of the above, or other appropriate actions. If a fact finder is appointed, a written report will be prepared and will be made part of the second step official's decision.
- (7) The second step official has 15 days from the receipt of the grievance to issue a written decision. If this is not possible (i.e., ongoing fact-finder inquiry), the grievant should be informed and kept apprised of the status of the grievance decision at 15-day intervals. However, under normal circumstances, the second step official should not extend issuing the grievance decision beyond 30 days or beyond 15 days from the completion of the fact-finder inquiry.
- (8) The second step official will issue a written decision on the grievance, which sets forth the decision, the reasons for the decision, and any supporting documentation including the fact-finder's report, if a fact-finder was appointed. If the employee submitted TSA Grievance Form 1115, the second step official must complete and return the form to the employee along with his/her decision.
- (9) The second step decision is the final decision on the grievance, and there is no further right to review.

C. Cancellation of a Grievance:

- (1) The employee may request cancellation of the grievance at any stage of the procedure.
- (2) The first or second step official, as applicable, may cancel a grievance under the following circumstances:

- (a) If the employee terminates employment with TSA, unless the grievance concerns relief which may be granted after termination of employment;
- (b) If the employee dies, unless the grievance concerns a financial consideration which may have been due the employee;
- (c) For failure to pursue, if the employee fails to furnish required information within the timeframes and procedures contained in this directive; or
- (d) Because the matter is excluded from the grievance procedure. If the matter is excluded and if an alternative procedure is appropriate for addressing the matter, the notice canceling the grievance will so inform the employee.

D. Record Keeping:

- (1) The local airport/office shall maintain a grievance file on each grievance in a secured location. These are Privacy Act records and must be maintained in accordance with 5 U.S.C. § 552a.
- (2) Grievance files shall be maintained for at least four years, but not longer than seven years.

**8. EFFECTIVE DATE AND IMPLEMENTATION:** This directive is effective immediately upon signature.

**APPROVAL**

*Signed*

*7/8/10*

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Richard Whitford  
Assistant Administrator for Human Capital

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Date

Distribution: Assistant Secretary/Administrator, Deputy Administrator, Associate Administrator, Assistant Administrators, Area Directors, Federal Security Directors, and TSA-affiliated Human Capital Offices.

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