

Civilian Personnel

**Grievance Procedures for Resolving Dissatisfaction With Nonbargaining Unit
Employee Performance Ratings**

This UPDATE printing publishes a revised regulation which is effective 31 December 1994. Because of the extensive changes made, no attempt has been made to highlight changed material.

For the Commander:

STEWART K. MCGREGOR
Colonel, GS
Chief of Staff

Official:

ROGER H. BALABAN
Director, Information Management

Summary. This regulation establishes the nonbargaining unit procedures for the resolution of grievances involving dissatisfaction with the performance appraisal process, and is to be used in conjunction with AR 690-700, chapter 771.

Impact on New Manning System. This regulation does not contain information that affects the New Manning System.

suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to HQ USAREC (RCCS-CPO), Fort Knox, KY 40121-2726.

Applicability. This regulation applies to all elements of the United States Army Recruiting Command.

Supplementation. Supplementation of this regulation is prohibited.

Distribution. Distribution of this regulation has been made in accordance with USAREC Pam 25-30, distribution B Plus. Plus equals 1-each servicing CPO (44) and 1-each servicing MACOM (4).

Suggested improvements. The proponent agency of this regulation is the Office of the Chief of Staff. Users are invited to send comments and

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- chapter 294.
- b. Related forms.
 - (1) DA Form 2590-R (Formal Complaint of Discrimination).
 - (2) DA Form 7222 (Senior System Evaluation Report).
 - (3) DA Form 7222-1 (Senior System Evaluation Report Support Form).
 - (4) DA Form 7223 (Base System Evaluation Report).

cluded employees are all nonappropriated fund employees and the following appropriated fund employees: Presidential appointees; Senior Executive Service employees; Army National Guard technicians employed under section 709, title 32, United States Code; employees outside the United States paid local nation prevailing wage rates; incumbents of positions not expected to last 120 days; and Cooperative Education Program employees.

1. Purpose

This regulation prescribes the nonbargaining unit procedures for all elements within the United States Army Recruiting Command (USAREC) in resolving grievances arising from the performance appraisal process.

2. References

- a. Related publications.
 - (1) AR 25-55 (The Department of the Army Freedom of Information Act Program).
 - (2) AR 25-400-2 (The Modern Army Record-keeping System (MARKS)).
 - (3) AR 340-21 (The Army Privacy Program).
 - (4) AR 690-400 (Total Army Performance Evaluation System).
 - (5) AR 690-700 (Personnel Relations and Services (General)).
 - (6) AR 690-900 (Civilian Personnel - General and Miscellaneous).
 - (7) FPM (Availability of Official Information),

3. Explanation of abbreviations

- a. CPO — civilian personnel office
- b. DA — Department of the Army
- c. DCPMS — DOD Civilian Personnel Management Service
- d. EEO — equal employment opportunity
- e. OPF — official personnel file
- f. USAREC — United States Army Recruiting Command

4. Employees excluded and covered

- a. These procedures do not apply to non-supervisory employees in an exclusive bargaining unit (i.e., officially represented by a union). These bargaining unit employees are covered by a negotiated grievance procedure.
- b. The procedures apply to all nonbargaining unit employees who are under the performance appraisal system described in AR 690-400, chapter 4302.
- c. The regulation cited in b above excludes certain employees from the appraisal process and, therefore, from this regulation. The ex-

5. Grievances covered and/or mixed cases

- a. These procedures shall be used to resolve grievances concerned with the performance appraisal process. The procedures address, in particular, grievances of summary ratings. However, the steps also apply to any grievable aspect of the performance appraisal process.
- b. Challenges to employee representatives shall be resolved by the same individual who has final decision-making authority for these grievances.
- c. Assigned critical job elements and performance standards are nongrievable matters.
- d. When the employee and management cannot agree that one or more aspects of the performance appraisal process is the sole issue, the grievance will be forwarded by the servicing civilian personnel office (CPO) to the appropriate DOD Civilian Personnel Management Service (DCPMS), Office of Complaints/Investigation, for review. If DCPMS, Office of Complaints/Investigations, determines that the performance appraisal process is the sole issue, the grievance

*This regulation supersedes USAREC Regulation 690-22, 7 October 1988.

will be returned through the servicing CPO to the organization for processing through the procedures of this regulation. If DCPMS, Office of Complaints/Investigations, determines that a grievance involves one or more issues other than the performance appraisal process, it will identify the nonperformance issues of the grievance, and return the entire grievance package to the servicing CPO for local processing using this regulation or agency grievance procedures as appropriate. The DCPMS, Office of Complaints/Investigations determinations in these matters are final within the Department of the Army (DA).

e. An employee who believes that unlawful discrimination may be involved in the matter being considered for a grievance has two choices. The employee may pursue the issue as an equal employment opportunity (EEO) discrimination complaint or as a grievance, but not both. The employee has 30 days after the grievable occurrence and/or objectionable rating to initiate a formal grievance or for presenting the matter to an EEO representative. Once the employee decides on a course of action, either by filing a formal grievance or by submitting DA Form 2590-R (Formal Complaint of Discrimination) for a formal complaint of discrimination, the choice is irrevocable. The procedures for filing an EEO complaint are covered in AR 690-900.

6. General principles

a. This regulation should be read by each covered employee as soon as possible upon receipt.

b. Employees are to be treated fairly with prompt consideration given to their grievances. In exercising the right to grieve, employees will be free from restraint, interference, coercion, discrimination, and reprisal.

c. Employees may act on their own behalf or be assisted by a representative of their choosing, provided that a conflict of interest does not occur because of the chosen representation.

d. Employees are entitled to a reasonable amount of official time to prepare and present their grievances.

e. Employees bear the burden of proof that the requested relief is warranted (e.g., a higher rating).

f. Grievance deciding officials are authorized to reject a grievance if filed untimely, or if the requested relief is not personal to the grievant.

g. Involvement of the servicing CPO is discretionary by grievants or management officials. Acting jointly or independently, they may seek advice from the CPO, but they are under no obligation to do so. For example, when mixed cases requiring referral to the DCPMS, Office of Complaints/Investigations, are involved, the assistance of the CPO would be expected. In the event of a formal grievance, the servicing CPO must receive a copy of the grievance decision materials, and may be involved in implementing the final decision. (See para 9 for additional information.)

h. Grievances under this regulation should be viewed as normal interactions between employ-

ees and supervisors. Management officials should treat grievances of this type as any management issue, priority, or tasker requiring prompt and serious attention. The approach to finding a solution should be similar to dealing with typical management taskers, whether personnel or nonpersonnel related. To sum it up, the management official should collect the basic facts by the most direct means; exercise objective judgment in sorting it out; and make and implement a final decision. Throughout the process, the need for the management official to maintain a fair and impartial human relations environment cannot be overemphasized.

i. In compliance with DA instructions, this regulation incorporates the provisions of AR 690-700, chapter 771, subchapters 1 and 2.

7. Informal procedures

a. The grievant shall attempt to resolve the grievance informally within **15 calendar days** after receipt of a rating, or the occurrence of a grievable event related to the performance appraisal process.

b. The informal procedure is accomplished by the employee initiating a discussion of the matter with the rater and/or supervisor within the 15 calendar days allowed. The employee shall clearly identify the matter as a "**grievance**," and also state the personal relief desired.

c. Any proposed rating change resulting from this process is not final until authorized by the approving official. If the decision is to change an element rating or summary rating, a DA Form 7223 (Base System Evaluation Report) or DA Form 7222 (Senior System Evaluation Report) and DA Form 7222-1 (Senior System Evaluation Report Support Form) must be prepared and officially substituted for the disputed appraisal in the official personnel folder (OPF).

8. Formal procedures

a. If the attempt to informally resolve the grievance to the employee's satisfaction is unsuccessful, the employee will have **15 calendar days** after receipt of the informal decision, or 30 days after the grievable occurrence (whichever is later), to send a properly written grievance to the deciding official. This is the official who is normally one level above the approving official and is usually the supervisor of the approving official.

b. The employee's written submission must be clearly identified as a formal grievance covered by this regulation. The formal grievance must state the issues involved and personal relief desired. For example, if the personal relief is a higher rating, the grievant must substantiate in writing why a higher rating is justified. Any change to a rating is normally dependent on changes to the individual objective rating. Therefore, the employee's perception of a higher than rated performance should be stated in terms of the performance standards.

c. The employee must include a summary of any attempt at informal settlement of the matter.

d. Simultaneously with sending the formal

grievance to the deciding official, the employee must send information copies to the rating officials (i.e., the rater and/or supervisor and approving official).

e. Upon receiving the formal grievance, the deciding official shall request a statement from the approving official. This statement should provide information to assist the deciding official in resolving the manner. The statement should also address considerations raised in the formal grievance.

f. The deciding official's decision may be based solely on information in the written grievance and the approving official's statement. The deciding official has the discretion to pursue other resources of information, if needed.

g. The deciding official must fully consider the grievance and decide on it objectively. A decision must be:

(1) based on the facts brought out during the grievance process;

(2) responsive to the employee's concerns, questions, or dissatisfactions; and

(3) fully explained in clear terms.

h. The deciding official should send the written decision of the grievant within 30 calendar days after receipt of the formal grievance. In unusual situations, this can be extended to no more than 60 calendar days. The grievance decision should be expeditiously forwarded to the grievant through command channels.

i. The deciding official's decision on the grievance is final.

j. When the chain of command requires that grievances filed under this regulation be referred from the field to Headquarters, United States Army Recruiting Command, the deciding official will be the Chief of Staff, USAREC. The grievance shall be submitted through the USAREC CPO (RCCS-CPO).

k. The deciding official will not be in the employee's rating chain.

9. Decision implementation

a. When a decision is favorable to an employee, the written decision will state the specific action to be taken. The action shall be taken promptly. Deciding officials should consult with the servicing CPO to ensure that tentative decisions do not conflict with personnel regulations.

b. If the decision is to change element ratings and/or summary ratings, a revised DA Form 7223 or DA Form 7222 and DA Form 7222-1 shall be prepared and officially substituted for the disputed appraisal in the OPF.

10. Records and reports

a. For grievances that reach the formal stage, the deciding official must provide the servicing CPO with the materials required for the grievance file.

b. The servicing CPO shall establish and maintain the official grievance file. This file will be kept separate from the OPF. The grievance file must contain all documents related to the grievance, including:

(1) the written grievances;

(2) designation of representative (if applicable);

(3) the (rating) approving official's statement and any other documents that influenced the grievance decision; and

(4) the grievance decision.

c. Access to the grievance file will be in accordance with applicable law, AR 25-55, AR 340-21, and the Federal Personnel Manual, chapter 294. The disposition of grievance files will be in accordance with AR 25-400-2.