

ATTACHMENT 5C1

QUESTIONS AND ANSWERS ABOUT UNFAIR LABOR PRACTICE APPEALS TO THE OFFICE OF THE GENERAL COUNSEL FEDERAL LABOR RELATIONS AUTHORITY

Q #1: What are the grounds for granting an appeal and what must my appeal establish to be granted?

The grounds for granting an appeal are set forth in Section 2423.11(e) of the Rules and Regulations. An appeal may be granted if it establishes at least one of the following grounds:

- 1. The Regional Director's decision did not consider material facts that would have resulted in issuance of a complaint.**

To establish this ground, your appeal:

- a. States the material facts which were not addressed in the investigation;
- b. States what evidence supports those facts; for example, certain documents or testimony from a specific witness; and
- c. Explains how those facts would result in the finding of an unfair labor practice.

- 2. The Regional Director's decision is based on a finding of a material fact that is clearly erroneous.**

To establish this ground, your appeal:

- a. States the material fact which is clearly erroneous;
- b. States what evidence establishes that the material fact is clearly erroneous; and
- c. Explains how a different factual finding would result in the finding of an unfair labor practice.

3. The Regional Director's decision is based on an incorrect statement of the applicable rule of law.

To establish this ground, your appeal:

- a. States what rule of law relied upon by the Regional Director is incorrect;
- b. States why that rule of law is incorrect;
- c. States what the correct rule of law should be; and
- d. Explains how the application of the correct rule of law would result in the finding of an unfair labor practice.

4. There is no Authority precedent on the legal issue in the case.

To establish this ground, your appeal:

- a. States the legal issue for which there is no rule of law under Authority precedent; and

- b. States the rule of law which you believe should be presented to the Authority.

5. The manner in which the Region conducted the investigation has resulted in prejudicial error.

To establish this ground, your appeal:

- a. Describes the improper manner in which the investigation was conducted;
- b. Explains why this manner of investigation was improper; and
- c. Explains how this manner of investigation resulted in prejudicial error.

Your appeal must address the reasons why you believe one or more of the above five grounds have been satisfied. Appeals that do not establish at least one of these grounds are denied.

Q #2: What happens after I file an appeal?

You will receive written notification that your appeal has been received. A staff member and a supervisor within the Office of the General Counsel, who do not work in the Region which investigated your case, will be assigned the appeal and will review your appeal and the evidence in the file obtained during the investigation. You will receive a written decision letter signed by the Deputy General Counsel on behalf of the General Counsel which either: 1) grants your appeal and orders further investigation of specific factual issues or issuance of a complaint over a specific violation; or 2) denies your appeal because none of the grounds for granting review have been established in your appeal.

If your appeal is denied, you may receive an appeal denial form letter. Issuance of the appeal denial form letter reaffirms the Regional Director's decision and informs the appealing party that the appeal did not establish grounds for remand or reversal of the decision. When the Regional Director's analysis and determination are deemed correct, it is not necessary to restate in the appeal determination the factual and legal basis for the dismissal or the reasons why the Regional Director's decision was correct.

Q #3: How long will it take to get a decision?

Our goal is to issue a decision on your appeal within 90 days or less of the date on which your appeal is received.

Q #4: Is there any appeal of the decision on my appeal?

The decision on the appeal is final. Section 2423.11 of the Rules and Regulations sets forth the appeals process. Paragraph (g) of this section provides that the Charging Party may file a motion for reconsideration of the final decision if it can establish with particularity extraordinary circumstances which are supported by citations to Authority case law. The motion must be filed within 10 days after the date on which the General Counsel's decision is postmarked. The General Counsel's decision on a motion for reconsideration is final.

Q #5: Should I include any of my evidence with my appeal?

No. All of the evidence that you gave to the Region during the investigation is in the investigative file and will be reviewed. You do not need to submit any evidence you have already given the Region during the investigation. However, you may refer to that evidence in your appeal.

Q #6: May I submit new evidence not given to the Region?

No. No new evidence will be considered unless you can establish in your appeal that the evidence either did not exist during the investigation or that you

could not have reasonably known about the existence of the evidence.

Q #7: Can I discuss the merits of my appeal with anyone from the Office of the General Counsel while my appeal is being decided?

No. The appeal process is not an investigative process. The decision will be based on your appeal and the investigative file. The Office of the General Counsel will notify you as soon as a decision is reached. If your appeal is granted, the case will be returned to the Regional Office and you will be contacted by the Region for further processing of the case.

Q #8: How many appeals are granted by the Office of the General Counsel?

Historically, since the enactment of the Federal Service Labor-Management Statute in 1979, the Office of the General Counsel has granted about 5% of the appeals of Regional Director's dismissals of unfair labor practice charges. Of the 495 appeals decided during Fiscal Year 1998, approximately 27 or 5% of the appeals were granted.

Q #9: Why are so few appeals granted?

Regional Directors make initial decisions on unfair labor practice charges using essentially the same evidentiary and legal standards that are applied during a review of that decision on appeal. Appeals are granted only in those cases where the appeal establishes, based on one or more of the grounds listed above, that the Regional Director's decision to dismiss the charge should be reversed or remanded.

If you have further questions about the appeals process, please contact any Regional Office or the Office of the General Counsel or visit the FLRA's home page on the Internet at www.FLRA.gov