

Administrative Review Process



District Personnel Instruction No. 16-15

Effective Date

March 31, 2016

Expiration Date

Retain Until Superseded

Related DPM Chapters

16

Overview

The District government's progressive discipline system allows for a comprehensive and impartial review of the facts associated with a proposed or summary removal action. The Administrative Review, performed by a Hearing Officer, entails an evaluation of the notice, supporting materials, and any employee responses to the action. The review yields a written report and recommendation that the Deciding Official must consider when issuing a final decision on the matter in question. This instruction outlines the general procedures for the Administrative Review process and the responsibilities of the Hearing Officer.

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Administrative Reviews

Employees who have been notified that they may be or have been removed from their position are entitled to an administrative review of the facts associated with the removal. The Administrative Review process is initiated once an agency issues a proposed or summary removal notice.

Administrative Review Process At-a-Glance

- ✓ An agency takes a proposed or summary removal action against an employee.
- ✓ Agency head (or designee) appoints a Hearing Officer.
- ✓ The employee submits his or her response to the proposed or summary removal action to the Hearing Officer within 10 days of receipt of the notice.
- ✓ The Hearing Officer reviews all of the documentation relating to this matter, including the notice and the employee's response
- ✓ Within 30 days of receipt of employee's response (or upon expiration of the time limit in which to respond) the Hearing Officer prepares a written report and recommendation for submission to the Deciding Official and a copy to the employee.
- ✓ The Hearing Officer officially transmits his or her report and recommendation to the Deciding Official for review and final decision.

Appointment of the Hearing Officer

When an agency decides to take a proposed or summary removal action against an employee, the agency head (or his or her designee) must appoint a Hearing Officer to conduct a review of the relevant documents associated with the action. The Hearing Officer must meet the following criteria:

1. Be a grade level DS-13 and above or equivalent;
2. Be A licensed attorney (if available);
3. Must work outside of the supervisory chain of command of the employee and the deciding official and must not be a subordinate of the proposing official; and
4. Have no direct or personal knowledge of the matters contained in the proposed or summary removal action, aside from hearsay that does not affect impartiality.

Once an agency head has identified a Hearing Officer, the name and contact information of the person must be provided to the employee in the proposed or summary notice.



Dual Appointment of Hearing Officer/Deciding Official: In no instances should the individual serving as the Hearing Officer also be designated as the Deciding Official. When an agency has a limited number of employees such that it is impractical to have a separate Hearing Officer and Deciding Official, they should contact another agency or consult with the personnel authority for guidance.

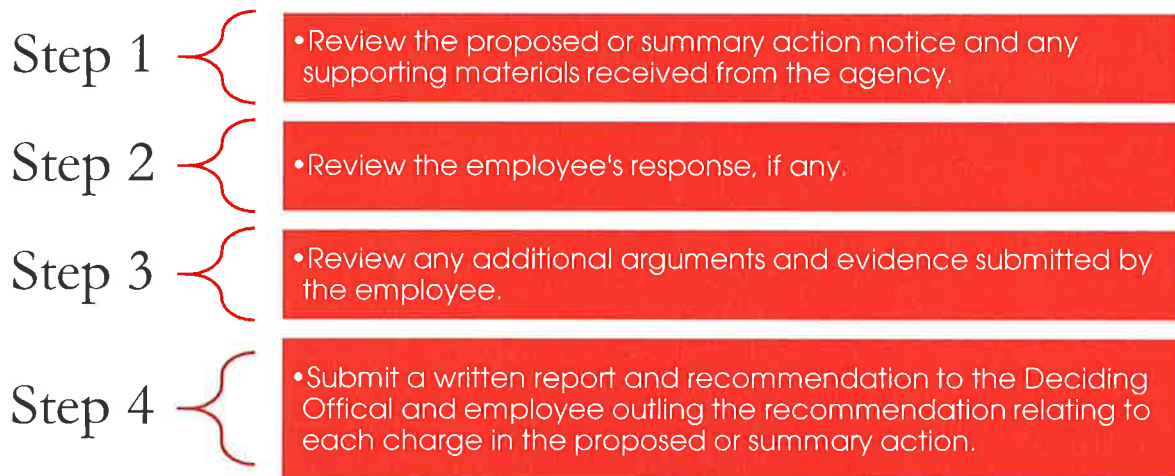
Employee Responsibilities

Employees who have been served a proposed or summary removal action have 10 days to submit a written response to the Hearing Officer. The employee response should include all evidence that he or she believes may significantly impact the agency's final decision on the matter. Evidence may include written statements from witness, affidavits, and other documents pertinent to the matter, or any other form or representation of information. If an employee does not submit a response, the Hearing Officer will only review any documentation or other evidence provided by the agency in support of the action.

Review Officer Responsibilities

The Hearing Officer must review the employee response and weigh the information with the notice and other supporting documentation received by the agency. The Hearing Officer review process is outlined below.

HEARING OFFICER REVIEW PROCESS



Each Hearing Officer must follow the above process for performing administrative reviews. In addition, the Hearing Officer must ensure that no substantive oral or written communications pertaining to the case occur between himself or herself and only one of the parties involved in the administrative review process (i.e. *ex parte* communication). A copy of any substantive inquiry or information sent by or to the hearing officer shall be served on the employee, the employee's representative (if any), and the agency representative.

Insufficient Evidence to Support Adverse Action

The proposing official is responsible for securing and providing sufficient evidence to support the proposed adverse action. In the event the Hearing Officer concludes that the agency has supplied insufficient evidence, the Hearing Officer should recommend that the action be rescinded for lack of evidence.

The Hearing Officer should not engage in his or her own investigation or request additional materials directly from either the employee or the agency.

Time Limit for Submission of Report

Within 30 days of receipt of an employee's response to the proposed or summary action, or upon the expiration of the employee's time to respond, the Hearing Officer must submit his or her written response and recommendation to the Deciding Official.



Deciding Official: Detailed information addressing the role and responsibilities of the Deciding Official is contained in DPM Instruction No. 16-13, *Discipline*, dated February 23, 2016.

Confidentiality and Recordkeeping

The Hearing Officer is responsible for ensuring that all documentation, information, and evidence submitted as part of the administrative review process is safeguarded and maintained in a confidential manner. As provided in General Records Schedule 1 (Personnel Records) (item 26(b)), all records relating to the administrative review are to be maintained for a period of four (4) years following closure of the case. These documents must be maintained separate from the employee's Official Personnel Folder. The General Records Schedule is accessible on the Office of the Secretary's website at www.os.dc.gov under the "Public Records Center" link.



Note: The Hearing Officer's report and recommendation should cite to and include as attachments **all** documents received and reviewed during the course of the administrative review. In turn, this full report should be issued to the Deciding Official and the employee. This ensures that a complete record is maintained by the Hearing Officer and the employing agency.

Legal

Authorities

1. **Statutory Authority:** D.C. Official Code § 1-606.04 *et. seq.*; and
2. **Regulatory Authority:** 6B DCMR § 1622 – *Administrative Review*.

Applicability

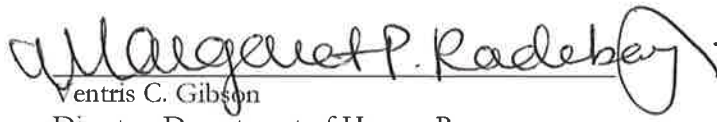
The information in this instruction is not applicable to employees serving in a probationary period or temporary appointment in the Career Service; employees under the Office of the Chief Financial Officer; Attorneys in the Legal or Senior Executive Attorney Services; employees in the Executive Service; employees in the Excepted Service; employees of the Board of Trustees of the University of the District of Columbia; and employees in the Management Supervisory Service, except as provided in 6B DCMR § 1600.3.

Collective Bargaining Agreement

In the event of a conflict between any of the provisions of this E-DPM instruction and any collective bargaining agreement (CBA), the provisions of the CBA shall control to the extent there is a difference.

Additional Information

For additional information concerning this instruction, please contact the Department of Human Resources, Policy and Compliance Administration, by calling (202) 442-9700 or by sending an e-mail to dchr.policy@dc.gov.

 for VCG
Ventriss C. Gibson
Director, Department of Human Resources

Attachment 1 – Acknowledgement of Receipt

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Goods and Services



**Policy and Compliance
Administration**

February 2, 2016

Mr. Vee Hickie
100 District Avenue NW
Washington, DC 20001

Subject: **Notification of Admin Review Process**

Dear Mr. Hickie:

On January 28, 2016, you were issued a notice of proposed removal. This letter serves as official notification that an administrative review has been initiated concerning the above-mentioned adverse action.

The administrative review process involves a comprehensive review of all of the materials submitted concerning this matter, inclusive of the proposed notice of removal, supporting documentation, and all arguments and evidence which you submitted.

Your response to this action was received on **February 1, 2016**. As the Hearing Officer appointed to review this matter, I am advising you that a written report and recommendation will be sent to the Deciding Official, Jimmy Cricket, within thirty (30) days for review and final decision. However, if necessary, the time limit for issuing the Hearing Officer report may be extended by the personnel authority for up to an addition 30 days.

If you have questions relating to the administrative review process, please contact me by calling 202-555-2345 or via email at hering.ophiser@dc.gov.

Sincerely,

Hering Ophiser

Hering Ophiser
Director of Goods and Services

441 4th Street NW, Suite 300 South, Washington, DC 20001 | Telephone (202) 442-9700

Attachment 2 – Sample Hearing Officer Report

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Goods and Services



**Policy and Compliance
Administration**

HEARING OFFICER REPORT

TO: Jimmy Krocket, Vehicular Services Administration
FROM: Hering Ophiser, Hearing Officer
DATE: Friday, August 21, 2015
SUBJECT: **Report and Recommendation – Proposed Removal of Vee Hickie**

I. SUMMARY

Mr. Vee Hickie is a Parking Enforcement Officer with the Department of Vehicular Services ("DVS" or "the agency"). On July 24, 2015, DVS issued Mr. Hickie a Proposed Separation Notice ("Notice"). Mr. Hickie sent a response to the Notice dated August 1, 2015, which was stamped as received by the agency on August 3, 2015. Based on a preponderance of the evidence, it is recommended that the agency proceed with the proposed removal of Vee Hickie.

II. STATEMENT OF THE CASE

On July 1, 2015, Mr. Hickie was assigned to monitor and enforce parking regulations at the Grandberry Park grounds. According to a police report submitted by Ms. Resident, while performing his parking enforcement duties, Mr. Hickie encountered a visitor (Visitor A) of the park who was upset she was unable to access her driver's side door because Ms. Resident had parked too close to her vehicle. Visitor A was heard by two other persons in the park telling Mr. Hickie "I should slash her tires" to which he responded "I would. There's piece of glass right there. I ain't see nothing" while issuing Ms. Resident a ticket. Visitor A was later arrested by the Metropolitan Police Department (MPD) for destruction of property¹. Ms. Resident contacted DVS to report the incident and MPD later contacted DVS to follow up with Mr. Hickie about his involvement in the incident and he has since been charged with inciting a third-party to commit a criminal offense². The notice identifies one cause for the basis of Mr. Hickie's removal: On-duty conduct that an employee should reasonably know is a violation of law or regulation³. The basis of this action are the reports received from Ms. Resident, MPD, and photos provided by AllState insurance on behalf of Ms. Resident.

In his response to the notice, Mr. Hickie does not dispute the incident. However, he claims that he did not intentionally tell Visitor A to damage Ms. Resident's car and that,

¹ D.C. Official Code §22-303

² D.C. Official Code §22-1805

³ 6B DCMR § 1607.2(a)(4)

Report and Recommendation – Proposed Removal of Vee Hickie

when he told Visitor A about the glass on the ground, he was "just joking" and didn't believe she would actually slash Ms. Resident's tires.

The following documents in support of the notice were provided to this Hearing Officer:

- Proposed Separation Notice dated July 24, 2015
- Employee Response dated August 1, 2015
- Supervisor's Incident Report
- Statement by Ms. Resident
- Photos (Provided by Ms. Resident)
- AllState Insurance Claim

III. FINDINGS OF FACT

Mr. Vee Hickie is currently employed as a Parking Enforcement Officer with DVS. On July 1, 2015, Mr. Hickie was assigned to monitor and enforce parking regulations at the Grandberry Park grounds where Ms. Resident's property was damaged after Mr. Hickie encouraged Visitor A to slash Ms. Resident's tires using a piece of glass laying on the ground. As a result, DVS issued its notice to Mr. Hickie. Based on the evidence, it is reasonable for DVS to find that Mr. Hickie incited a third party to commit a criminal offense and for him to be removed from employment with DVS.

IV. CONCLUSION

As outlined in 68 DCMR §1607.2(a)(4), an employee may be subject to discipline for engaging in on duty conduct that an employee should reasonably know is a violation of the law. Mr. Hickie does not deny his involvement in the incident that resulted in the damage of Ms. Resident's car. Based on the facts and his statement, he should have reasonably known that his remarks could incite Visitor A to carry out an unlawful act. Therefore, this Hearing Officer finds that Mr. Hickie did engage in on-duty conduct that is a violation of the law and that the proposed removal is appropriate.

Hearing Officer Signature

3/24/2016
Date

FINAL DECISION

- ☐ The recommendation of the Hearing Officer is **ACCEPTED**.
- ☐ The recommendation of the Hearing Officer is **DENIED**.

Jimmy Cricket, Deciding Official

3/25/2016
Date

Attachment 3 – Transmittal to the Deciding Official

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Goods and Services



**Policy and Compliance
Administration**

MEMORANDUM

TO: Jimmy Cricket

FROM: Hering Ophiser, Associate Director of Goods and Services

DATE: Thursday, March 3, 2016

SUBJECT: **Confidential Report and Recommendation | Vee Hickie**

As you are aware, I have been appointed as the Hearing Officer in the adverse action case of Vee Hickie. Attached for your review is my written report and recommendation concerning the proposed removal. Specifically, the following documents are attached:

- Hearing Officer Report and Recommendation
- Copy of the proposed removal notice
- Supporting documentation and evidence submitted by Vee Hickie

Upon your review, if you have questions or concerns, please contact me by calling 202-555-5555, or via email at hering.ophiser@dc.gov.

Attachments

CC: Mr. Vee Hickie

441 4th Street NW, Suite 300 South, Washington, DC 20001 | Telephone (202) 442-9700