

## **3 FAM 4450 PRESENTATION OF GRIEVANCES TO THE BOARD**

### **3 FAM 4451 FILING OF GRIEVANCE**

*(TL:PER-268; 6-6-95)*

*(Uniform State/USAID/USIA/Commerce/Foreign Service Corps - USDA)*

*(Applies to Foreign Service Employees Only)*

A member whose grievance is not resolved satisfactorily under agency procedures (see 3 FAM 4430) shall be entitled to file a grievance with the Board no later than 60 days after receiving the agency decision. In the event that an agency has not provided its decision within 90 days of presentation, the grievant shall be entitled to file a grievance with the Board no later than 150 days after the date of presentation to the agency. The Board may extend or waive for good cause the time limits stated in this section.

### **3 FAM 4452 EXHAUSTION OF AGENCY PROCEDURES**

*(TL:PER-268; 6-6-95)*

*(Uniform State/USAID/USIA/Commerce/Foreign Service Corps - USDA)*

*(Applies to Foreign Service Employees Only)*

In the event that the Board finds that a grievance has not been presented for agency consideration or that a grievance has been expanded or modified to include materially different elements, the Board may return the grievance to the official responsible for final agency review unless the agency waives any objection to Board consideration of the grievance without such review.

### **3 FAM 4453 INTERIM RELIEF**

*(TL:PER-268; 6-6-95)*

*(Uniform State/USAID/USIA/Commerce/Foreign Service Corps - USDA)*

*(Applies to Foreign Service Employees Only)*

a. If the Board determines that the agency is considering the involuntary separation of the grievant, disciplinary action against the grievant, or recovery from the grievant of alleged overpayment of salary, expenses, or allowances, which is related to a grievance pending before the Board and that such action should be suspended, the agency shall suspend such action until the date which is one year after such determination or until the Board has ruled upon the grievance, whichever comes first. The Board shall extend the one-year

limitation under the preceding sentence and the agency shall continue to suspend such action, if the Board determines that the agency or the Board is responsible for the delay in the resolution of the grievance. The Board may also extend the one year limit if it determines that the delay is due to the complexity of the case, the unavailability of witnesses or to circumstances beyond the control of the agency, the Board or the grievant. Notwithstanding such suspension of action, the head of agency concerned or a chief of mission or principal officer may exclude the grievant from official premises or from the performance of specified functions when such exclusion is determined in writing to be essential to the functioning of the post or office to which the grievant is assigned. Notwithstanding the first sentence of this paragraph, the Board's authority to suspend such action shall not extend to instances where the Secretary, or his designee, has exercised his authority under subsection (a)(3) of Section 610 of the Act.

b. The Board may expedite its decisions on requested suspension of agency actions. The Board may permit or require argument for such requests by the parties and exclusive representative, if any.

### **3 FAM 4454 ACCESS TO WITNESSES (BOARD LEVEL)**

*(TL:PER-268; 6-6-95)*

*(Uniform State/USAID/USIA/Commerce/Foreign Service Corps - USDA)*

*(Applies to Foreign Service Employees Only)*

The grievant or grievant's representative shall be given access to witnesses employed by the foreign affairs agencies. In the event that the agency or the grievant determines that the requests for access are excessive, it may so notify the Board which must rule on the relevancy and materiality of the potential testimony and may order that access be granted to any or all of the potential witnesses. It shall be the responsibility of the grievant to advise the agency of the agency witnesses to be interviewed and to request administrative leave, as provided in 3 FAM 4424c.

### **3 FAM 4455 DECISIONS**

*(TL:PER-268; 6-6-95)*

*(Uniform State/USAID/USIA/Commerce/Foreign Service Corps - USDA)*

*(Applies to Foreign Service Employees Only)*

a. Upon completion of its proceedings, the Board shall expeditiously decide the grievance on the basis of the record of proceedings. In each case the decision of the Board shall be in writing, and shall include findings of fact, and a statement of the reasons for the decision of the Board.

b. If the Board finds that the grievance is meritorious, the Board shall have the authority to direct the agency:

- (1) To correct any official personnel record relating to the grievant which the Board finds to be inaccurate or erroneous, to have an omission, or to contain information of a falsely prejudicial character;
- (2) To reverse a decision denying the grievant compensation or any other prerequisite of employment authorized by law or regulation when the Board finds that such denial was arbitrary, capricious, or contrary to laws or regulations;
- (3) To retain in the Service a member whose separation would be in consequence of the matter by which the member is aggrieved;
- (4) To reinstate the grievant, and to grant the grievant back pay, where it is clearly established that the separation or suspension without pay of the employee was unjustified or unwarranted under 5 U.S.C. 5596(b)(1);
- (5) To pay reasonable attorney fees to the grievant to the same extent and in the same manner as such fees may be required by the Merit Systems Protection Board under 5 U.S.C. 7701(g);
- (6) To take any corrective action deemed appropriate by the Board provided it is not contrary to law or collective bargaining agreement.

c. Except as provided in paragraph d, decisions of the Board shall be final, subject only to judicial review as provided for in section 1110 of the Act.

d. If the Board finds that the grievance is meritorious and that remedial action should be taken that relates directly to promotion, tenure, or assignment of the grievant or to other remedial action not otherwise provided for in this section, or if the Board finds that the evidence before it warrants disciplinary action against any employee of an agency or member of the Service, it shall make an appropriate recommendation to the head of the agency. The head of the agency shall make a written decision within 30 days from receipt of the recommendation. The head of the agency shall implement the recommendation of the Board except to the extent that, in a decision made within the 30-day period, the head of the agency rejects the recommendation in whole or in part on the basis of a determination that implementation of the recommendation would be contrary to law, or would adversely affect the foreign policy or national security of the United States.

e. If the head of the agency rejects the recommendation in whole or in part, the decision shall specify the reasons for such action. Pending the decision of the head of the agency, there shall be no ex-parte communications concerning the grievance between the agency head and any person involved in the grievance proceedings. The head of the agency shall, however, have access to the entire record of the proceedings of the Board.

f. If the head of agency rejects the recommendation in whole or part, as contrary to law, the decision shall be submitted to the Board with a request for reconsideration in whole or in part. Within 30 days thereafter the Board shall make a recommendation to the head of the agency either confirming, modifying, or vacating its original recommendation, and this recommendation by the Board after its review shall be considered a final action and be implemented by the head of agency.

g. The Board shall apply, with respect to any grievance base on an alleged violation of a law, rule, regulation, or policy directive referred to in section 3 FAM 4412c(9), the substantive law that would be applied by the Equal Employment Opportunity Commission if a charge or claim alleging discrimination under such law, rule, regulation, or policy directive had been filed with the Commission.

h. The Board, in reviewing a grievance covered by section

3 FAM 4412c(8), may not substitute its judgement on the level or granting of a clearance but must, upon a finding of improper action, return the case to the agency for reconsideration in accordance with its findings.

i. The text of the regulations of the Board (22 CFR, Chapter I) is published in 3 FAH-1 H-4450. See exhibit A.

### **3 FAM 4456 THROUGH 4459 UNASSIGNED**