

# REGULATION

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<b>Subject:</b> <b>EMPLOYMENT RELATIONS BOARD APPEAL PROCEDURES</b>			

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### 1. PURPOSE

This regulation establishes standards and procedures to appeal a decision to the Civil Service Commission through the Employment Relations Board.

## 2. **CIVIL SERVICE COMMISSION RULE REFERENCE**

Note: This Section 2 reprints only selected Commission Rules for quick reference by the reader. Additional Rules (that are not reprinted below) may apply. The complete, current version of the Rules can be found at [www.michigan.gov/mdcs](http://www.michigan.gov/mdcs).

### **Rule 8-7 Appeal to Civil Service Commission**

#### **8-7.1 Appeal to Civil Service Commission**

*When authorized in the civil service rules, a party aggrieved by the final decision of an adjudicating officer may appeal the decision to the civil service commission. An appeal to the commission must be filed with the employment relations board, as provided in the civil service rules and regulations. Unless an administrative officer recommends dismissal of the appeal as provided in rule 8-7.4 [Summary Dismissal of Claim or Application], the employment relations board shall make a recommendation to the commission as provided in rule 1-15.4 [Duties].*

#### **8-7.2 Claim and Application**

- (a) **Further appeal as of right by employee.** An employee with status who was dismissed for just cause may appeal as of right from a final decision of an adjudicating officer upholding the dismissal. The state personnel director shall provide for an expedited appeal procedure in the regulations.*
- (b) **Further appeal as of right by appointing authority.** An appointing authority that dismissed an employee for just cause may appeal as of right from a final decision of an adjudicating officer reinstating the employee. The state personnel director shall provide for an expedited appeal procedure in the regulations.*
- (c) **Further appeal by application and leave granted.** A party aggrieved by any other final decision of an adjudicating officer may appeal to the civil service commission upon application and leave granted.*

#### **8-7.3 Time Limits for Appeal to Commission**

- (a) **Time limits for appeal to commission.** Except where another rule or a regulation establishes a shorter period, a claim of appeal or an application for leave to appeal must be received by the employment relations board within 28 calendar days after the date the final decision of the adjudicating officer is issued.*
- (b) **Proof of service.** The party filing the appeal must serve a copy of the claim or application on all other parties and provide proof of the service within 3 calendar days after the claim or application is filed with the board.*
- (c) **Late filing.** If a claim or application is not filed timely, the claim or application must be accompanied by an affidavit setting forth either good cause or special extenuating circumstances for the delay.
  - (1) The administrative officer may accept a claim or application up to 28 calendar days late if the appellant demonstrates good cause for the delay that was not due to the appellant's own negligence.**

- (2) *The administrative officer may accept a claim or application filed more than 28 calendar days but less than one year late if the appellant demonstrates special extenuating circumstances for the delay.*
- (3) *A claim or application filed more than one year late cannot be accepted or considered under any circumstances.*

#### **8-7.4 Summary Dismissal of Claim or Application**

*A civil service administrative officer may recommend that the civil service commission summarily dismiss a claim or application for any of the following reasons:*

- (a) **Not authorized.** *The appellant is not authorized to file the appeal or the claim or application is not subject to review by the commission.*
- (b) **Lack of jurisdiction.** *Civil service staff or the civil service commission lacks jurisdiction over a necessary party or over the subject matter of the appeal.*
- (c) **Untimeliness.** *The claim or application is untimely.*
- (d) **Another action pending.** *Another civil service action has been initiated between the same parties involving substantially the same matter.*
- (e) **Barred by prior claim.** *Substantially the same matter was adjudicated to finality in another action between the same parties.*
- (f) **Failure to respond.** *A grievant or technical complainant fails to respond to a deficiency notice issued by civil service staff, as provided in the civil service rules and regulations.*

#### **8-7.5 Grounds for Granting an Application for Leave to Appeal**

- (a) **Procedure.** *If an administrative officer does not recommend summary dismissal of the application for leave to appeal, the employment relations board shall consider the application as provided in rule 1-15.4(b) [Duties] and the applicable regulations.*
- (b) **Grounds for granting leave to appeal.** *In the discretion of the civil service commission, leave to appeal may be granted in any matter in which it is alleged that (1) the decision of the adjudicating officer is erroneous, (2) the decision violates article 11, section 5, of the Michigan constitution or is otherwise contrary to law, including the civil service rules and regulations, or (3) the question presented is of major significance to the classified service.*

#### **8-7.6 Decision by Civil Service Commission**

*The civil service commission shall review and act on the recommendation of the administrative officer or the employment relations board, as provided in rule 1-15.5 [Final Action by the Commission].*

#### **8-7.7 Effective Date of Decision of Commission**

*A decision of the civil service commission is effective when issued unless a different effective date is specified in the decision.*

### **8-7.8 Commission May Assume Jurisdiction**

*The civil service commission reserves the authority to assume jurisdiction and to take appropriate action in any proceeding at any time before the employment relations board issues its final recommendation.*

### **8-7.9 Appeal of Final Commission Decision to Circuit Court**

- (a) **Service of complaints and petitions for review.** *If authorized by law, a party may file a petition for review of a final decision of the civil service commission in the Michigan circuit court. Any complaint or petition filed challenging any decision, rule, or regulation of the commission must name the commission as a party and must be served on the commission at the office of the state personnel director in Lansing, Michigan.*
- (b) **Settlement of claims and lawsuits.** *Where a proposed agreement resolving a claim or lawsuit contains a provision pertaining to a decision, rule, or regulation of the commission, the appointing authority or its designee shall consult with the state personnel director or the director's designee before the agreement is finalized to insure that it is consistent with all civil service decisions, rules, and regulations. The commission is not bound by any provision pertaining to a civil service decision, rule, or regulation unless the director or the director's designee has approved the provision.*

## **3. DEFINITIONS**

### **A. Civil Service Commission Rule Definitions**

1. **Adjudicating officer** *means the state personnel director or other civil service administrative officer, technical review officer, hearing officer, arbitrator, or other officer authorized to make a decision reviewable by the civil service commission.*
2. **Administrative officer** *means the state personnel director or a person authorized by the state personnel director to take administrative action on matters filed with civil service staff or the civil service commission.*
3. **Board** *means the employment relations board.*
4. **Commission** *means the Michigan civil service commission.*
5. **Good cause** *means an acceptable excuse for failing to file or take other required action timely. Good cause does not include a person's own carelessness, negligence, or inattention to the filing or other requirements.*
6. **Hearing officer** *means a person authorized by the state personnel director to administer oaths and conduct hearings as provided in the civil service rules and regulations.*
7. **Special extenuating circumstances** *means a compelling excuse for the failure to file a matter timely that arises out of one of the following:*
  - (a) *An intentionally or fraudulently misleading action by an appointing authority or party that prevented the filing.*
  - (b) *Serious physical or mental incapacity of the person that prevented the filing.*

(c) *Extraordinary unforeseen circumstances outside the control of the person that prevented the filing.*

8. **Technical decision** includes each of the following individual decisions:

(a) **Technical classification decision** means a civil service staff decision (1) classifying a position in the classified service or (2) making a working-out-of-class determination.

(b) **Technical disbursement decision** means a civil service staff decision authorized under rule 7-6 [Prior Written Approval by Civil Service Staff] or rule 7-7 [Preauthorized Approval] regarding disbursements for personal services.

(c) **Technical appointment decision** means (1) a decision of an appointing authority appointing a candidate to a position in the classified service or (2) a decision of civil service staff certifying or revoking an appointment to a position in the classified service.

#### B. Additional Definitions as used in this Regulation

1. **Authorized representative** means a person authorized by a party in a proceeding before the Board or Commission to appear for and represent the interests of the party.
2. **Concurrently serve** means, on the same day that a document is filed with the Board, to (1) deliver by hand, (2) send by first-class or certified mail, (3) or send to an authorized fax or e-mail address.
3. **Contested hearing** means a quasi-judicial proceeding before a hearing officer in which the parties, after notice, may introduce documentary evidence, examine and cross-examine witnesses under oath, and submit arguments.
4. **Proof of service** means a written statement filed with the Board certifying the date and method by which a party served a copy of a document on another party.
5. **Required copies and proof of service** means the signed original and **six** complete copies of any document filed with the Board, all copies of the document required to be concurrently served on other parties, and the proof of service on other parties that is required to be made concurrently to the Board.

## 4. STANDARDS

A. **Appellate Jurisdiction of Employment Relations Board.** An appeal to the Civil Service Commission may be filed in the following matters, for which the Employment Relations Board exercises appellate jurisdiction for the Commission:

1. **Grievance appeals.** Claims of appeal as of right and applications for leave to appeal from final decisions of adjudicating officers, under rule 8-2.5.
2. **Technical review decisions.** Applications for leave to appeal final technical review decisions, under rule 8-3.

3. **Labor relations appeals.** Applications for leave to appeal labor relations decisions of the State Personnel Director or other Civil Service staff, including decisions concerning the following:
  - a. Prohibited subjects of bargaining, under rule 6-3.5.
  - b. Recognition and unit determinations, petitions for unit elections, or excluded position determinations, under rule 6-6.
  - c. Unfair labor practice charges or other final labor relations decision, under rule 6-14.3.
  - d. Fines on employees or labor organizations for engaging in, promoting, encouraging, or supporting strikes, under rule 6-15.
4. **Other decisions.** Applications for leave to appeal other decisions of the State Personnel Director or other Civil Service staff, when authorized by the Civil Service rules or regulations, including, but not limited to decisions concerning the following:
  - a. Disbursements for personal services, under rule 7-9.
  - b. Drug testing of new hires, under Rule 2-7.4(b).
  - c. Benefits under group insurance plans, under Regulation 5.18.

#### B. General Procedure.

1. **Form of appeal.** Appeals to the Commission must be initiated by filing either (1) a claim of appeal as of right (**claim**) (Form CS-1756) to appeal a dismissal grievance or (2) an application for leave to appeal (**application**) (Form CS-1743) for all other appeals.
2. **Location to file.** All appeals must be filed with the Employment Relations Board, Michigan Civil Service Commission, Capitol Commons Center, 400 South Pine Street, Suite 102, P.O. Box 30002, Lansing, Michigan 48909. Filings can also be made by fax at (517) 335-2884 or by e-Mail at [MCSC-ERB@mi.gov](mailto:MCSC-ERB@mi.gov).
3. **Filing deadline.** The party filing an appeal (**appellant**), whether by claim or application, must ensure **receipt** of the appeal by the Board within **28 calendar days** after the date the final decision of the adjudicating officer is **issued**. An appeal or any other document filed with the Board is considered filed when the Board **receives** the document, as provided in Regulation 8.06 [Computing Time and Filing Documents].
4. **Six copies required.** When a party files **any** document with the Board, the party must file **one signed original and six complete copies** of the document, unless otherwise required in this regulation.
5. **Service on other parties required.** A party that files **any** document with the Board must **concurrently** serve a copy of the document on all other parties. In a group grievance, a party serving a group only must serve a copy on the group's authorized representative. In an appeal of a technical review decision or a State Personnel Director decision, the adjudicating officer who issued the decision participates in Board proceedings as an interested party and must be served.
6. **Proof of service required.** A party that serves a copy of a document on other parties must file a signed and dated proof of service with the Board within three

calendar days after the original is filed with the Board. The proof of service must contain substantially all the information required in Form CS-1740, which is available from the Board or at [www.mi.gov/erb](http://www.mi.gov/erb). The Board will not accept as proof of service a general statement in a cover letter or filing that all other parties have been copied the enclosed materials.

7. **Perfecting filings.** If any document is originally filed by fax or e-mail, all required copies and proof of service of the document must be **received** by the Board within **7 calendar days** after the fax or e-mail filing. If not received within 7 calendar days, the initial fax or e-mail filing is considered untimely, unless requisite good cause or special extenuating circumstances are demonstrated.
8. **Signature and identification.**
  - a. The appeal must contain the appellant's (1) name, (2) employee identification number, (3) employing agency, (4) mailing address, (5) telephone number, and (6) e-mail address.
  - b. If the appellant has an authorized representative, the appeal must contain the representative's (1) name, (2) organization, (3) business mailing address, (4) business telephone number, (5) fax number, and (6) e-mail address.
  - c. The appellant or authorized representative must sign the appeal.
9. **Changing authorized representative.** If a party changes its authorized representative, the party or new representative must (1) provide the Board in writing the information in Standard 4.B.8.b for the new authorized representative, (2) concurrently serve a copy of the notice on all other parties, and (3) file a proof of service with the Board.
10. **Cross-appeals.**
  - a. Any other party may file a cross-appeal within **14 calendar days** after a claim or application is filed with the Board.
  - b. To perfect a cross-appeal, a cross-appellant must file all required copies and proof of service of (1) a signed concise statement of cross-appeal and (2) a cross-appeal brief. The statement and brief must comply with the content and filing requirements applicable to the underlying appeal.
  - c. A cross-appeal may be prosecuted even if the adverse party's appeal is abandoned or dismissed.
11. **Stipulations.** The parties may stipulate in writing to any matter pertaining to the appeal, including the composition of the record. All stipulations must comply with Civil Service rules and regulations and are subject to acceptance by the Board.
12. **Computing time and filing documents.** Unless otherwise specifically provided, Regulation 8.06 [Computing Time and Filing Documents] applies to all proceedings of the Board and Commission.
13. **Limit on communications.** The Board and its administrative officer shall not communicate privately with parties or authorized representatives on the facts or merits of a pending matter. Private communications needed for scheduling and administrative matters unrelated to the merits or facts are allowed.

**C. Claim of Appeal as of Right (Claim).**

1. **Authorized.** Only the following may file a claim of appeal as of right (**claim**):
  - a. A nonexclusively represented employee (NERE) with status aggrieved by a final decision of an adjudicating officer upholding the employee's dismissal for just cause.
  - b. An agency aggrieved by a final decision of an adjudicating officer reinstating a NERE dismissed for just cause by the agency.
2. **Eligibility.** A dismissal for just cause is the permanent termination of the employment relationship of a NERE with status for just cause. It does not include, for example, the following: (a) termination of a probationary employee without status; (b) layoff; (c) separation from the classified service at the end of a leave of absence; (d) revocation of an appointment authorized in rule 3-6; (e) separation of an employee in a limited-term appointment at or before the end of the term of appointment due to lack of work or funding; or (f) separation of a member of the Senior Executive Service (SES) or Senior Executive Management Assistant Service (SEMAS) when the employee's appointment expires if the employee did not have status when appointed to the SES or SEMAS.
3. **Contents of claim.** The claim must contain substantially all of the information required in Form CS-1756, which is available from the Board or at [www.mi.gov/erb](http://www.mi.gov/erb). The claim must clearly identify the decision being appealed (including the case name, decision number, and Civil Service reference number).
4. **Briefing schedule.** After the Board receives the record, the Board will notify the parties of the schedule for briefs and oral arguments.
  - a. **Appellant's appeal brief.**
    - (1) **Contents.** The appellant's appeal brief in support of the claim must include the following:
      - (a) A statement identifying one or more of the grounds for modification or reversal listed in Standard 4.O.1 on which the appellant relies.
      - (b) A statement of the facts and law supporting the appellant's argument. The brief must specifically identify the documents, testimony, or other facts in the record and the rules, regulations, agency work rules, or other law on which the appellant relies.
    - (2) **Filing and service.** All required copies and proof of service of the brief must be filed within **28 calendar days** after the Board issues its notice, or at such other time as the Board or its administrative officer orders.
  - b. **Brief of responding parties.** An appellee or cross-appellee must file all required copies and proof of service of any response brief to the Board **within 28 calendar days** after the appeal brief is filed with the Board, or at such other time as the Board or its administrative officer orders.
  - c. **Expedited process.** On request of any party, the Board or its administrative officer may expedite the appeal process by shortening the time to file briefs, calling for immediate appearance for oral argument, or otherwise accelerating the process.

- d. **Additional briefs.** The Board does not consider additional or rebuttal briefs, unless specifically requested by the Board.

**D. Application for Leave to Appeal (Application).**

1. **Authorized.** If a claim of appeal as of right is not authorized, a party aggrieved by a final decision of an adjudicating officer may appeal to the Board upon application and leave granted when authorized in the Civil Service rules and regulations.
2. **Contents of application.** The application must contain substantially all of the information required in Form CS-1743, which is available from the Board or at [www.mi.gov/erb](http://www.mi.gov/erb), including the following:
  - a. **Decision appealed.** The identity of the decision being appealed, including the case name, decision number, and Civil Service reference number. If a decision of an arbitrator issued under Regulation 8.01 is appealed, the appellant must file a copy of the arbitrator's decision with the application.
  - b. **Concise statement of material proceedings.** A concise description of the material events, dates, and decisions leading to the application.
  - c. **Grounds for appeal.** A sufficient explanation establishing one or more of the following grounds for appeal:
    - (1) The decision of the adjudicating officer is erroneous.
    - (2) The decision violates article 11, section 5 of the Michigan Constitution or is otherwise contrary to law, including the Civil Service rules and regulations.
    - (3) The question presented is of major significance to the classified service.
3. **Response to application.** Any other party to the decision being appealed must file all required copies and proof of service of any response **within 28 calendar days** after the appellant's application is filed with the Board. The response must contain substantially all of the information required in Form CS-1754, which is available from the Board or at [www.mi.gov/erb](http://www.mi.gov/erb). The response must clearly identify the decision (including the case name, decision number, and Civil Service reference number). If the original application is deficient, the Board may issue notice of an amended deadline for submitting a response, as needed to allow other parties an appropriate opportunity to respond.

**E. Summary Dismissal of Claim or Application.** Before the Board considers an appeal, its administrative officer may recommend summary dismissal to the Commission for the reasons listed below. The recommendation is transmitted directly to the Commission for review and final action.

1. **Not authorized.** The appellant is not authorized to file the appeal.
2. **Lack of jurisdiction.** Civil Service or the Commission lacks jurisdiction over a necessary party or the subject matter of the appeal.
3. **Untimeliness.** The appeal is untimely.
4. **Another action pending.** Another Civil Service action has been initiated between the same parties involving substantially the same matter.

5. **Barred by prior action.** Substantially the same matter was adjudicated to finality in the Civil Service system in another action between the same parties.
  6. **Failure to respond.** The party failed to perform properly and timely any act required by the Civil Service rules or regulations, administrative officer, Board, or Commission.
  7. **Failure to state a claim.** The appeal failed to allege and address any ground for granting leave to appeal under Rule 8-7.5.
- F. Consideration of Application.** If the Board's administrative officer does not recommend summary dismissal, the Board shall review the merits of the grounds for the application and issue a recommendation to the Commission.
1. **Grounds for granting application.** The Board may recommend that the Commission grant the application if the Board determines that any ground for appeal in Rule 8-7.5(b) is met.
  2. **Recommendation.**
    - a. **Denial of application.** If the Board recommends denying the application, the Board shall issue a recommendation to the Commission for final action.
    - b. **Grant of application.** If the Board recommends granting the application, the Board shall issue a recommendation to grant leave. The Board may concurrently make its recommendation on the merits of the appeal or may conduct further proceedings before issuing a separate recommendation on the merits. The Board's recommendation to grant leave is reviewed by the Commission when the Commission reviews the Board's final recommendation on the merits of the application.
  3. **Procedure After Grant of Application.** If the Board grants an application, the following procedures apply:
    - a. **Briefing schedule.** The Board will notify parties of the schedule for any additional briefs or oral arguments that the Board deems necessary.
    - b. **Appellant's appeal brief.** The appellant must file all required copies and proof of service of any requested appeal brief to the Board within **21 calendar days** after the date of the Board's notice. The appellant's brief must include the following:
      - (1) A statement of the specific reasons why the appellant seeks to have the decision of the adjudicating officer modified or reversed. The appellant must identify grounds for modification or reversal in Standard 4.O.1.
      - (2) A statement of the facts and law supporting the appellant's argument. The brief must specifically identify the documents, testimony, or other facts in the record and the rules, regulations, agency work rules, or other law on which the appellant relies.
      - (3) A response to any questions raised by the Board in its decision granting the application.
    - c. **Response briefs.** An appellee or cross-appellee must file all required copies and proof of service of any requested response brief within **21 calendar days** after the date the appellant's or cross-appellant's appeal brief

is filed with the Board. The Board does not consider additional or rebuttal briefs, unless specifically requested by the Board.

4. **Remand.** The Board may, at any time, remand a case with directions for further action. Unless the Board expressly retains jurisdiction, a case is remanded without prejudice to filing a new application by any party from any further final decision of the adjudicating officer. A remand order is not appealable to the Commission as a final recommendation of the Board.

#### G. Extensions of Time.

1. **Incomplete filing.** If a party in good faith files a timely claim, application, brief, or other pleading that does not substantially comply with the Civil Service rules and regulations, the Board's administrative officer shall issue a notice of deficiency to the party and allow **14 calendar days** to correct the deficiency.
2. **Extension before deadline.**
  - a. **Stipulation.** The parties may stipulate in writing to an extension of time to file a claim, application, brief, or other pleading. The Board must receive any stipulation *before* the original time limit expires. A stipulated extension cannot exceed **28 calendar days**,
  - b. **Advance request.** A party may file one copy and proof of service of a request for an extension in writing with the Board. Any request must be received **before** the deadline for filing. The Board's administrative officer may grant an extension of time to file if the administrative officer finds sufficient justification.
3. **Late filing.** Any late appeal, motion, or other document must be accompanied by a signed written explanation for the lateness. If no explanation is provided, the administrative officer must send a notice of deficiency to the filing party. If the party fails to establish the required good cause or special extenuating circumstances or does not timely correct the deficiency, the appeal is dismissed as untimely or for failure to respond. The Board or its administrative officer may ask the other parties to respond to the explanation, if deemed necessary.
  - a. **1 to 28 days.** The Board's administrative officer shall deny as untimely any document received up to 28 calendar days late, unless the filing party establishes good cause that was not due to the party's own negligence.
  - b. **29 days but less than 1 year.** The Board's administrative officer shall deny as untimely any document received more than 28 calendar days but less than 1 year late, unless the filing party establishes special extenuating circumstances.
  - c. **1 year or more.** The Board's administrative officer shall deny as untimely, without notice of deficiency, any document received 1 year or more late.

#### H. Effect of Filing Appeal.

1. **After final decision of adjudicating officer.**
  - a. **Exclusive jurisdiction.** Once an appeal from a final decision of an adjudicating officer is perfected, the Board exercises exclusive jurisdiction over the matter, subject to assumption of jurisdiction by the Commission.

- b. **Stay of final grievance decision.** A grievance decision of an adjudicating officer is final and binding on the parties 29 calendar days after its issuance, unless either (1) the decision provides for a later effective date or (2) a party files an appeal to the Commission within 28 calendar days after its issuance.
- (1) Unless all parties agree otherwise, the status of the parties and their relationships at the time of the decision remain unchanged during the 28-day period after the final decision is issued.
  - (2) If a party files a timely appeal **and** concurrently serves all other parties within the 28-day period, the effective date of the decision is automatically stayed pending further order of the Board or Commission.
  - (3) If no party intends to appeal a final decision, the parties may implement the decision at any time.
  - (4) If no party has filed an appeal **and** served all other parties within 28 calendar days after the final decision is issued, the decision is effective on the 29th day and the parties must promptly comply with its terms.
  - (5) If a motion to reinstate the stay is concurrently filed with a late appeal, and the late filing is accepted under Standard 4.G.3, the Board may reinstate the stay if in the interests of justice to do so.
- c. **Reinstatement or restoration of base pay.** If a final decision of an adjudicating officer orders an agency to reinstate a grievant who was dismissed for just cause, the agency, as a condition of further appeal to the Commission, must temporarily either (1) reinstate the grievant or (2) restore the grievant's base pay and medical, dental, and vision group insurance.
- d. **Unit representation determination.** If the state employer or a labor organization files a timely application for leave to appeal a unit determination decision of the State Personnel Director, the decision is stayed pending further order of the Board or Commission.

## 2. Before final decision of adjudicating officer.

- a. **Application for interlocutory appeal.** A party may file an application for interlocutory appeal from an interim decision of an adjudicating officer. The appellant must file all required copies and proof of service of any application within **14 calendar days** after the date of the interim decision. The application must concisely describe the material events, dates, and decisions leading to the interlocutory appeal, allege grounds for appeal, and establish one of the following conditions:
- (1) **Adjudicating officer certification.** The adjudicating officer has certified that the interim decision involves a controlling question of law, Civil Service rule or regulation, or procedure as to which (1) there is substantial ground for difference of opinion and (2) an immediate appeal will materially advance the ultimate resolution of the case.
  - (2) **Irreparable harm.** If the relief requested in the interim decision is not granted, the appellant will suffer irreparable harm by awaiting final decision in the case.

- b. **Response.** Any other party must file all required copies and proof of service of any response to the application for interlocutory appeal within 14 calendar days after the date the application is filed.
- c. **Stay of proceedings.** The proceedings before the adjudicating officer are not stayed by filing an interlocutory appeal, unless the adjudicating officer expressly orders a stay.

#### I. Special Procedures.

1. **Expedited procedure.** After notice to the parties, the Board may shorten the time to file responses, dispense with briefs, require simultaneous briefs, call for immediate appearance for oral argument, or otherwise expedite any proceeding.
2. **Emergency appeal.** Upon (1) the showing of due diligence and irreparable harm if normal practice is followed and (2) reasonable notice to all parties and opportunity for their response, the Board may grant a motion for emergency relief or appearance before the Board at its next meeting. The moving party must file all required copies and proof of service of the motion.
3. **Other motions.** All motions, other than those justifiably made at oral argument or otherwise authorized in this regulation, must (1) be made in writing to the Board, (2) briefly state the relief sought, and (3) be accompanied by a brief or affidavits setting forth grounds for the action requested. The moving party must file all required copies and proof of service of the original motion. Other parties must file all required copies and proof of service of any written response within 14 calendar days after the date the motion was filed with the Board. All motions are decided upon the papers filed with the Board, unless the Board calls for oral argument or indicates otherwise.
4. **Joinder.** Upon motion of a party, the Board, or its administrative officer, parties may be added, dropped, or substituted at any stage of proceedings, upon terms the Board deems appropriate.
5. **Consolidation.** Upon motion of a party, the Board, or its administrative officer, proceedings before the Board may be consolidated when similar or interrelated facts or issues of law exist, if no substantial right of any party is prejudiced.
6. **Intervention.** Upon written motion that establishes sufficient reason, the Board may permit a person, an organization, an employer, or Civil Service staff to intervene as a party or interested party before the Board. The moving party must file all required copies and proof of service of the motion. The Board may request intervention or responses by non-participating parties or individuals when deemed necessary.
7. **Group appeals.**
  - a. In a group appeal, a claim, application, brief, or other pleading may be signed by an authorized representative for the group.
  - b. When a claim, application, or other pleading is filed, the Board must be provided with the name, mailing address, and telephone number of **each** person participating as a party in a group appeal. Group appellants must file a Form CS-1793, which is available from the Board or at [www.mi.gov/erb](http://www.mi.gov/erb), or provide information equivalent to that required on Form CS-1793.

- c. In a group appeal, all correspondence between the Board and parties is with the authorized representative. If a party does not have an authorized representative or has more than one authorized representative, the Board shall issue appropriate orders for the conduct of proceedings.
- J. Relief.** The Board may recommend any relief within the Commission's authority under the Constitution and the Civil Service rules and regulations. This includes, but is not limited to, recommending that the Commission affirm, reverse, or modify, in whole or in part, any adjudicating officer decision or remand for further proceedings.
- K. Record.** The part of the original record possessed by Civil Service staff or an arbitrator must be transmitted promptly to the Board upon request.
1. **Preparation of record.**
    - a. **Civil Service cases.** Unless the parties have stipulated to a record, the Board will obtain the record from the applicable Civil Service division and make it available to the parties for inspection and copying.
    - b. **Arbitration cases.** If the appeal is from a decision under the arbitration alternative under Standard 4.C of Regulation 8.01, the appellant must certify to having (1) ordered a copy of the transcript of the arbitration proceedings and (2) asked the arbitrator to forward the entire record, including the original exhibits and briefs, to the Board.
  2. **Record after contested hearing.** An appeal of a decision after a contested hearing is heard on the original papers and exhibits certified by the adjudicating officer and any transcript. The Board or parties may seek a stipulation of facts instead of providing a transcript. When a substantial part of the transcript has no bearing on the appeal, the entire transcript is not required, but nothing bars a party from obtaining and submitting all or any portion of the transcript.
  3. **Record with no contested hearing.** An appeal of a final technical review decision or other decision without a contested hearing is heard on the original papers and exhibits transmitted to the Board by the adjudicating officer. These include all original documents filed by the parties and any supplemental documents used by the adjudicating officer in rendering a decision.
  4. **Transcript not available.** When a stenographic record was made but a transcript cannot be created, the parties may meet with the adjudicating officer to settle the record.
  5. **Definition of Record.**
    - a. **When contested hearing held.** If a contested hearing was held, the record before the Board to which the briefs are addressed, includes the following:
      - (1) The grievance record, including grievances, complaints, answers, investigative or disciplinary reports, and material correspondence at prior steps of the grievance process.
      - (2) The pleadings, papers, briefs, and correspondence submitted by the parties to the adjudicating officer.
      - (3) Filings, decisions, and orders of the adjudicating officer.
      - (4) Certified transcripts of proceedings.

- (5) Exhibits admitted into evidence by the adjudicating officer or Board.
  - (6) Things judicially noticed.
  - (7) Any claim, application, or cross-appeal filed with the Board.
  - (8) Briefs, supporting documents, and affidavits filed with the Board.
- b. **When no hearing held.** If no contested hearing was held, the record before the Board to which the briefs are addressed includes the following:
- (1) The pleadings, papers, briefs, exhibits, and correspondence submitted by the parties to the adjudicating officer.
  - (2) Other documents relied upon by the adjudicating officer in rendering a decision.
  - (3) Filings, decisions, and orders of the adjudicating officer.
  - (4) Any claim, application, or cross-appeal filed with the Board.
  - (5) Briefs, supporting documents, and affidavits filed with the Board.

#### L. **New Evidence.**

1. **Record closed.** Except for pleadings filed and decisions issued on appeal to the Board, the record is closed when the final decision of the adjudicating officer is issued.
2. **Motions.** When considering an appeal, the Board shall not accept new evidence except upon its own motion or written motion of a party for a legally sufficient reason. A document that could have been added to the record during earlier proceedings in a matter is presumed to have an inadequate basis for addition to the record. When the Board allows new evidence, it may do any of the following:
  - a. Hear the evidence itself.
  - b. Request a response brief from other parties.
  - c. Assign the matter to a Board member or an adjudicating officer to hear and return a record.
  - d. Remand the case to an adjudicating officer to hear the evidence and render a new or supplemental decision.

#### M. **Dismissal of Appeals.**

1. **Authority.** An appeal can only be dismissed by (1) the Board based upon a motion from a party or the Board itself, (2) the Board's administrative officer, as authorized in rule 8-7.4, or (3) stipulation of the parties.
2. **Withdrawal.** A party may withdraw an appeal by filing one copy of a written request and proof of service on all other parties with the Board and obtaining approval of the Board's administrative officer.

#### N. **Oral Argument.**

1. **Chair.** The Chair of the Board presides at oral argument.
2. **When heard.** Oral argument must be heard on a claim of appeal as of right. In any other case, oral argument may be scheduled at the discretion of the Board.

3. **Procedure.** The parties are heard in public session in the order established on the Board agenda. The Board shall give notice of oral argument to a party or the party's authorized representative. Unavailability of a party with an authorized representative is not cause to postpone oral argument.
  - a. A written motion to postpone oral argument may be filed up to the day before oral argument with the Board's administrative officer. The motion must state good cause and set out the position of all other parties on the motion. The moving party must file all required copies and proof of service of the motion.
  - b. The Board's administrative officer may postpone or reschedule oral argument based on administrative considerations.
  - c. An oral request to postpone on the day of oral argument may be made to the Board and must set forth good cause. The Board may postpone, adjourn, or reschedule oral argument based on administrative considerations upon request or its own motion.
4. **Time limit.** Unless otherwise directed by the Board, each party may address the Board for a maximum of 15 minutes. In a group grievance, one person may address the Board for a maximum of 15 minutes for all members of the group. An appellant may offer rebuttal argument for a maximum of 5 minutes. The Board may extend the time for any party on request or at its own discretion.
5. **Contemptuous conduct.** Contemptuous conduct during the claim, application, or oral argument is grounds for exclusion from oral argument and other appropriate disqualification.
6. **Recording by Party.** A party may employ at its expense a certified stenographic, audio, or video reporter to record an oral argument if the Board determines that it will not be unduly disruptive. The party must request approval of the Board at least 14 calendar days in advance.

#### **O. Recommendation.**

1. **Grounds for modification or reversal.** The Board reviews appeals from technical review decisions de novo and may recommend to the Commission any action authorized by law. For all other appeals, the Board may recommend that the Commission modify or set aside a decision of an adjudicating officer if substantial rights of the appellant are prejudiced because the decision is any of the following:
  - a. In violation of, or an erroneous interpretation of law, including the Civil Service rules and regulations.
  - b. In excess of the authority or jurisdiction of the adjudicating officer.
  - c. Made upon unlawful procedure resulting in material prejudice to a party.
  - d. Arbitrary and capricious.
  - e. A clear abuse or unwarranted exercise of discretion.
  - f. Affected by other substantial and material error of law.
  - g. For a decision based on a contested hearing, not supported by the preponderance of competent, material, and substantial evidence on the whole record.

2. **Interim Board decisions.** Board decisions that are procedural or not final recommendations to the Commission are effective when issued, unless the decision provides otherwise. An interim decision does not require prior Commission review and approval, but is reviewed by the Commission when it reviews any final Board recommendation.
3. **Final recommendation.** Unless the Board remands for further action, the Board must issue a final recommendation to the Commission on each claim and application. The Board must recommend that the Commission affirm, reverse, or modify, in whole or in part, the decision of the adjudicating officer.
4. **Conference.** Decisions of the Board are made in a conference from which all persons except the Board and its staff are excluded. The Board may meet and confer in person, by telephone or other electronic means, or by correspondence.
5. **Majority.** Decisions of the Board must be by majority vote of a quorum.
6. **Division.** When only two members participate and they disagree on the ultimate decision, each member shall make a separate written recommendation.
7. **Dissent.** Decisions of the Board are unanimous unless indicated.
8. **Confidentiality.** Except for the record and published decisions of the Board or Commission, all files of the Board and Commission, State Personnel Director, adjudicating officers, and Civil Service staff related to appeals, including, but not limited to, internal correspondence and discussions, research, staff analyses, and draft decisions are confidential and not open to the public.
9. **Notice.** The Board shall issue all its decisions and orders to the parties by United States or interdepartmental mail to the last known address of the parties and their representatives or as otherwise deemed appropriate.
10. **Further appeal to the courts.** The final decision of the Commission is subject to review in the Michigan circuit court. A claim of appeal must be filed within 60 calendar days after the date the final Commission decision is issued. A claim of appeal must name the Michigan Civil Service Commission as an appellee and must be served on the Michigan Civil Service Commission at its main office, 400 South Pine Street, Lansing, Michigan 48913. See Michigan Court Rule 7.117 and Michigan Compiled Laws §§ 24.301-24.306.
11. **Awards.** All awards are subject to the provisions of Rule 8-2.4 and Standard 4.B.15 of Regulation 8.01 [Grievance and Grievance Appeals Procedures].

**P. Post-Decision Procedures.**

1. **Commission Review.** After the Board issues a final recommendation, the Commission **automatically** reviews the recommendation and issues a final Commission decision without further action required by any party.
2. **Enforcement.** If a party fails to comply with an order of the Board or Commission, any other party may request a further order of the Commission compelling compliance. If the Commission issues a compliance order, every party must promptly comply and the State Personnel Director shall take all necessary steps to compel compliance. If a party fails to comply with a compliance order of the Commission, the State Personnel Director or other party may apply for further relief to the appropriate circuit court or court of claims.

**CONTACT**

Questions regarding this regulation should be directed to the Employment Relations Board, Civil Service Commission, 400 South Pine Street, Suite 102, P.O. Box 30002, Lansing, Michigan 48909; by telephone, at (517) 335-5588; by fax, at (517) 335-2884; or by e-mail, at [MCSC-ERB@mi.gov](mailto:MCSC-ERB@mi.gov).