

# REGULATION

<b>SPDOC No.:</b> 10-14	<b>Effective Date:</b> December 9, 2010	<b>Index Reference:</b> Technical Complaints	<b>Regulation Number:</b> <b>8.07</b>
<b>Issuing Bureau:</b> Executive	<b>Rule Reference:</b> Rule: 2-14 (Rights of Employees Absent Due to Service in the Uniformed Service)		<b>Replaces:</b> Reg. 8.07 (SPDOC <del>108-142</del> , <del>Nov</del> December <del>16</del> 2, 2010 <del>8</del> )
<b>Authority:</b> The State Personnel Director issues regulations under authority granted in the Michigan Constitution and Michigan Civil Service Commission Rules. Regulations are subordinate to the Rules.			
<b>Subject:</b> <b>TECHNICAL MILITARY BENEFIT COMPLAINTS</b>			

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### 1. PURPOSE

This regulation establishes procedures ~~for~~ to processing complaints challenging Civil Service staff technical decisions ~~regarding~~ on employment rights and benefits arising out of service in the uniformed services.

### 2. CIVIL SERVICE COMMISSION RULE REFERENCE

**Note:** This section reprints only selected Civil Service Commission Rules for quick reference by the reader. Additional rules may apply. The complete, current version of the rules can be found at [www.mi.gov/mdcs](http://www.mi.gov/mdcs).

#### *2-14 Rights of Employees Absent Due to Service in the Uniformed Services*

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#### *2-14.7 Enforcement*

##### *(a) Complaints.*

- (1) *Grievance.* Except as provided in subsection (a)(2), an employee who is entitled under this rule or the regulations to return-to-work rights or benefits and who

*claims that an appointing authority has failed or refused, or is about to fail or refuse, to comply with the provisions of this rule or the regulations, may file a grievance and grievance appeal as authorized in the rules and applicable regulations.*

- (2) **Technical complaint.** A person, whether or not a classified employee, who is entitled to employment or return-to-work rights or benefits under the regulations and has a complaint regarding a technical decision may file a technical complaint as authorized in the rules and the regulations.*
- (b) **Stay of proceedings.** A grievance or technical complaint under this rule or the regulations concerning employment or return-to-work rights or benefits due to service in the uniformed services is automatically stayed if any of the following proceedings are initiated under applicable federal law concerning any of the same period of service in the uniformed services alleged in the grievance or technical complaint:*

  - (1) An investigation by the United States Secretary of Labor in response to a complaint filed by the employee.*
  - (2) A state or federal civil action filed by the employee against the State of Michigan or any of its agencies.*
  - (3) A state or federal civil action filed by the United States on behalf of the employee against the State of Michigan or any of its agencies.*
- (c) **Summary dismissal of grievance.** If an employee receives a final judgment on a claim in a civil action brought against the State of Michigan or any of its agencies under applicable federal law concerning employment or return-to-work rights or benefits due to service in the uniformed services, a grievance or technical complaint under this rule or the regulations by the employee regarding any of the same period of service in the uniformed services may be summarily dismissed in whole or in part on the basis of claim preclusion or issue preclusion, as appropriate.*
- (d) **No waiver.** This rule does not constitute a waiver of the sovereign immunity of the State of Michigan under the United States Constitution.*

### **3. DEFINITIONS**

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

- 1. **Uniformed services** means all of the following:*

  - (a) The armed forces of the United States, including the army, navy, marine corps, air force, coast guard, army reserve, naval reserve, marine corps reserve, air force reserve, and coast guard reserve.*
  - (b) The army national guard and the air national guard when engaged in federal or state active duty for training, inactive duty training, or full-time national guard duty.*
  - (c) The commissioned corps of the public health service.*

- (d) *The National Disaster Medical Service (NDMS), for service performed as an intermittent disaster-response appointee upon activation of the NDMS or participation in a related training program, as authorized in 42 USC §300hh-11(e)(3)(A).*
- (e) *Any other category of persons designated by the president in time of war or national emergency.*

## B. Additional Definition as used in this Regulation

1. **Technical military benefit decision** means a Civil Service staff decision regarding rights and benefits authorized under Rule 2-14 [Rights of Employees Absent due to Service in the Uniformed Services] or Regulation 2.04 [Military Leaves of Absence and Return to Work: Basic Rights]. Examples of a technical military benefit decision include a determination of eligibility for supplemental pay and correction under compliance audits conducted by Civil Service staff.

## 4. STANDARDS

### A. Filing Complaints.

1. **Complaint Authorized.** A person directly affected by a technical military benefit decision may file a written complaint with the Civil Service Office of Technical Complaints at [MCSC-OTC@mi.gov](mailto:MCSC-OTC@mi.gov). ~~The complainant must simultaneously file a copy of the complaint with the office of the Civil Service staff that issued the disputed technical military benefits decision.~~
2. **Complaint Contents.** The technical complaint is the final opportunity for the complainant to offer new evidence into the administrative record without needing to demonstrate a legal basis to add the evidence. The complaint must include the following:
  - a. A copy of the technical military benefit decision being questioned.
  - b. A complete statement of why the technical military benefit decision violated Article 11, Section 5 of the Michigan Constitution; violated a Civil Service rule or regulation; or was arbitrary and capricious.
  - c. Documentary evidence establishing performance of uniformed service during the relevant time period, which shall consist of:
    - (1) A military leave and earnings statement demonstrating service on the days
    - (2) A military transaction log history, military attendance schedule, or master military pay account form demonstrating service on the days, or
    - (3) Orders accompanied by a document on military letterhead signed by a superior officer of competent authority indicating training or active duty in the uniformed service led to absences on the days.

- d. A copy of any DD-214 issued upon completion of the period of uniformed service or a statement that no DD-214 was issued for the period.
  - e. If supplemental pay is sought, copies of official military leave and earning statements demonstrating the employee's name, grade, and years of service; basic pay and dollar amount; and remarks indicating what type of duty was performed and all dates that the pay covers.
  - f. A clear statement of the desired outcome of the complaint. The outcome must be within the authority of Civil Service staff to grant.
  - g. The signature, address, phone number, and any e-mail address of the complainant and any representative.
3. **~~Time Limitations for Filing Technical Complaints~~**. A complaint must be received by the Civil Service Office of Technical Complaints within 28 calendar days after the mailing date of the technical military benefits decision. If the complainant is unavailable due to uniformed service during the 28-day period, the deadline for filing is extended until 28 calendar days after the later of the date the complainant (1) is discharged from service in the uniformed service if not returning to work in the classified service or (2) returns to work in the classified service.
  4. **~~Extension for Filing~~**. The technical review officer may also grant an extension if, before the required time for filing expires, the technical complainant shows sufficient justification for an extension.

#### **B. Complaint Investigation.**

1. In addition to and in accordance with rule 8-4, a technical military benefit complaint may be administratively dismissed without prior notice for any of the following reasons:
  - a. The complaint fails to set forth allegations with sufficient particularity to permit review.
  - b. The complaint fails to allege a violation of a Civil Service rule or regulation or Article 11, Section 5, of the Michigan Constitution or to allege other relevant error in the decision.
  - c. The complaint fails for other good and sufficient reason to warrant further review.
2. The technical review officer shall obtain the record related to the underlying technical decision from the Office of Compliance. The Office of Compliance may file a written response to the technical complaint. The Office of Compliance must send a copy of any such response to the complainant.
3. A technical review officer is not authorized to conduct a hearing, but may contact or meet with the complainant or other interested parties to discuss the complaint.

### C. Technical Review Decision.

1. The technical review officer shall review the record and decide the matter based on the submissions, agency records, Civil Service rules and regulations, and technical expertise. At the conclusion of the technical review, the technical review officer shall issue a final written technical review decision setting forth the review officer's material findings of fact, conclusions of law, and remedial orders, if any.
2. The decision of a technical review officer shall contain notice of the right of interested parties to file an application for leave to appeal to the Civil Service Commission, as provided in regulation 8.05 [Employment Relations Board Appeal Procedures].

## 5. PROCEDURE

Responsibility	Action
Employee	1. Files technical complaint and all necessary supporting documentation with <a href="#">the Office of</a> Technical Complaints and also sends a copy to Office of Compliance.
Office of Technical Complaints	<ol style="list-style-type: none"> <li>2. Obtains record for technical decision from Office of Compliance.</li> <li>3. Reviews complaint, record, and any other filings and conducts any investigation deemed necessary.</li> <li>4. Issues written decision to employee.</li> </ol>

### CONTACT

Questions regarding this regulation should be directed to the Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; [or](#) by telephone; at [\(517\)-373-3024](#).