

# Michigan Civil Service Commission

## Regulation 8.02

<b>Subject:</b> <b>Technical Classification and Qualification Complaints</b>		
<b>SPDOC No.:</b> 21-04	<b>Effective Date:</b> September 5, 2021	<b>Replaces:</b> Reg. 8.02 (SPDOC 16-06, January 1, 2017)

### 1. Purpose

This regulation establishes procedures to file technical classification and qualification complaints, as authorized in rules 4-3 and 8-3.

### 2. CSC Rule References

#### *3-3 Appointments and Job Changes*

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##### *3-3.10 Qualification*

*An employee or appointing authority that does not agree with a staff qualification decision may file a written request for reconsideration with the state personnel director as provided in the regulations. The state personnel director or the director's designee shall reconsider the staff qualification decision in writing. If an employee's appointment is revoked as provide in rule 3-7 due to a staff qualification decision, the employee or appointing authority may file a technical appointment complaint as provided in the rules and regulations in lieu of requesting reconsideration.*

#### *4-3 Appeals*

*Only the appointing authority may appeal the classification of a newly established position. Either the appointing authority or an adversely affected employee may appeal a change in the classification or classification level of a previously established position through authorized technical appeal procedures.*

#### *8-3 Technical Complaints*

##### *8-3.1 Complaint Regarding Technical Decision Authorized*

*An authorized individual, appointing authority, or organization may file a technical complaint with civil service technical review staff, as provided in this rule and the regulations.*

*(a) Technical classification complaint. An employee directly affected by a technical classification decision, or the employee's appointing authority, may file a technical classification complaint.*

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### 8-3.2 Time Limits

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*(b) Other technical complaints.* A technical classification complaint or technical disbursement complaint must be filed within 14 calendar days after the date the civil service staff issued the original technical decision.

### 8-3.3 Civil Service Technical Review

*(a) Referral to technical review officer.* If the technical complaint is not administratively dismissed under rule 8-4 [Summary Dismissal], a technical review officer shall conduct an expeditious review in accordance with the civil service rules and regulations.

*(b) Technical review procedures.*

*(1) Hearing not authorized.* A technical review officer is not authorized to conduct a hearing.

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*(3) Technical review decision.* At the conclusion of the technical review, the technical review officer shall issue a final technical review decision setting forth the review officer's material findings of fact, conclusions of law, and remedial orders, if any. The final technical review decision shall be based on (1) the technical expertise of the review officer, (2) the civil service rules and regulations, (3) agency records, and (4) the documents and written submissions of the parties. In a review of a technical appointment complaint, the technical review officer shall also consider the written recommendation of the hearing officer on any certified question of fact.

### 8-3.4 Further Appeal to Commission Authorized

An interested party in a technical review proceeding may file an appeal of a final technical review decision, including a summary dismissal of the technical complaint, to the civil service commission, as provided in the civil service rules and regulations.

### 8-3.5 Effective Date of Decision of Technical Review Officer

*(a) Technical classification review.* A final technical review decision on a technical classification complaint is effective immediately upon issuance, unless a different effective date is specified in the decision.

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## 3. Definitions

### A. CSC Rule Definitions.

- 1. Interested party,* in any other technical review, means a party that filed a technical complaint or a written appearance in the technical complaint review proceeding.
- 2. Party* means any of the following persons or organizations:

\* \* \*

*(b) Party, in a technical classification review, means any of the following:*

- (1) An employee whose classification is directly affected by a technical classification decision.*
- (2) The appointing authority of an employee in subdivision (b)(1).*
- (3) Any other interested person with a demonstrable special interest in the technical classification decision that is granted permission to participate in the review.*

\* \* \*

**3. Technical complainant** means any of the following persons when directly affected and aggrieved by a technical decision:

- (a) An applicant for employment.*
- (b) A classified employee.*
- (c) An appointing authority.*
- (d) The office of the state employer.*
- (e) Any other person or organization specifically authorized by civil service rule or regulation to file a technical complaint.*

**4. Technical complaint** means a written complaint that a technical decision (1) violated article 11, section 5, of the Michigan constitution, (2) violated a civil service rule or regulation, or (3) was arbitrary and capricious.

**5. 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.*

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## **B. Definitions in This Regulation.**

- 1. Staff qualification decision** means a civil service staff decision determining the qualifications and fitness of a candidate for a position in the classified service.
- 2. Technical qualification complaint** means a request for the director or the director's designee to reconsider a staff qualification decision, as authorized in rule 3-3.10.

## **4. Standards**

### **A. Filing Complaints.**

1. An employee or appointing authority directly affected by a technical classification decision or staff qualification decision by the Office of Classification, Selection, and Compensation may file a technical classification or technical qualification complaint

with the Office of Technical Complaints. The complaint must be submitted on the Technical Complaint form ([CS-212](#)) to [MCSC-OTC@mi.gov](mailto:MCSC-OTC@mi.gov).

- a. An employee organization cannot file a complaint over a technical decision, but may serve as representative for the complainant.
  - b. A complaint for a position in a preauthorized classification is accepted only if Civil Service has made a technical decision. If an appointing authority denies a preauthorized reclassification, the incumbent must first request a position review by Civil Service under regulation 4.03.
  - c. Disputes over evaluating an incumbent's work performance are not subject to technical complaints.
  - d. Incumbents in the same classification may file a joint complaint of a denied or modified classification action. The incumbents must be performing the same duties and responsibilities and must have occupied their positions for the equivalent of one year of full-time service. Only incumbents who sign the [CS-212](#) are considered complainants.
2. **Complaint.** The technical complaint is the complainant's final opportunity to offer evidence into the administrative record without needing to demonstrate a legal basis to add the evidence. The complaint must include the following:
- a. All information required in Part A of the [CS-212](#) for each complainant.
  - b. A clear and concise description of the technical decision questioned, including any additional information required in the form's instructions.
  - c. A complete statement of why the technical decision (1) violated article 11, § 5 of the Michigan Constitution; (2) violated a rule or regulation; or (3) was arbitrary and capricious.
  - d. Any documentary evidence that the complainant believes supports the technical complaint.
  - e. A clear statement of the desired outcome, which must be within the authority of Civil Service to grant.
  - f. Each complainant's signature, which can be a scanned document of an actual signature or a complainant's typed name followed by "/s/" (e.g., "John Doe /s/").
  - g. The name, mailing address, and email address of the complainant's representative, if any.
3. **Time limits.** To be timely, the Office of Technical Complaints must **receive** the complaint within 14 days after the date the underlying technical decision was **issued**.

4. **Extension.** The technical review officer may grant an extension to file if, before the filing deadline passes, the complainant shows sufficient justification.

#### **B. Administrative Denial.**

1. **Preliminary review.** Upon receipt of a complaint, staff shall conduct a preliminary review to determine the timeliness and sufficiency of the complaint.
2. **Reasons.** In addition to grounds in rule 8-4, a technical classification or qualification complaint may be administratively dismissed without prior notice if the complaint:
  - a. Fails to set forth allegations with sufficient particularity to permit review.
  - b. Involves matters that are not subject to review, including the rules and regulations, the Equitable Classification Plan, the maintenance, criteria, and pay of individual classifications, position freezes, and other requirements or limits approved by Civil Service.
  - c. Fails for other good and sufficient reason to warrant further review.

#### **C. Technical Review Decisions.**

1. **Complaint investigation.** A technical review officer cannot conduct a hearing, but may contact or meet with the complainant or other interested parties to discuss the complaint or seek additional submissions, if necessary.
2. **Decisions.**
  - a. The technical review officer shall review all submissions de novo and decide the matter based on the submissions, agency records, rules and regulations, and technical expertise.
  - b. **Technical classification review decisions.** A technical review officer's decision in a technical classification complaint must contain notice of interested parties' right to file an application for leave to appeal to the commission under regulation 8.05.
  - c. **Technical qualification review decisions.** A technical review officer's technical qualification review decision in a technical qualification complaint is the commission's final decision and may be appealed to the circuit court under the review procedures described in rule 8-7.9

#### **D. Implementing Decisions.**

1. **Effective date.** The effective date assigned to a technical classification complaint decision is the first day of the pay period when the original request for a position review was received. If the appointing authority submitted the request, the effective date is assigned under regulation 4.04. If the employee submitted the position review request, the effective date is assigned under regulation 4.03.

2. **Parties granted relief.** Only complainants listed on the CS-212 may obtain full relief, including the effective date of the original position review. Other similarly situated individuals may only be granted the same classification relief prospectively.
  3. **Effects of vacating a position.** If an incumbent vacates a position before the complaint process ends and ultimately prevails:
    - a. The employee who complained about a classification action receives compensation in the awarded classification retroactive to the effective date of the original position review until the date the employee vacated the position.
    - b. The employee has reinstatement rights in the awarded classification, as described in the rules and regulations.
    - c. If the employee vacated the position as a result of a reduction in force, the employee's name is placed on the appropriate recall list for the awarded classification. This does not require the bumping chain to be reinstated.
    - d. The awarded classification is limited to the position that gave rise to the complaint and cannot be transferred to other positions.
  4. **Effect on subsequent employee.** In a successful complaint, when a new incumbent has been appointed to the position, the position remains at the previous classification until the successor has satisfactorily performed the duties for the equivalent of one year of full-time service. The position may be reclassified to the awarded classification sooner if the successor qualifies for an early reclassification under regulation 4.05.
- E. Grievance Settlements.** An appointing authority cannot unilaterally settle a classification or qualification dispute through a grievance or arbitration proceeding covered by a collective bargaining agreement or regulation 8.01.

## CONTACT

Questions on this regulation may be directed to the Office of Technical Complaints, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-241-9093; or to [MCSC-OTC@mi.gov](mailto:MCSC-OTC@mi.gov).