



STATE OF VERMONT
OFFICE OF THE ADJUTANT GENERAL
789 Vermont National Guard Road
Colchester, Vermont 05446-3099

NGVT-HRO

VTNG Instruction 1400.25 Volume 752

DISTRIBUTION: A

25 Apr 2022

ADMINISTRATIVE GRIEVANCE PROCEDURES

- i. Purpose. Provide guidance for the submission of administrative grievances to allow employees of the Vermont Army and Air National Guard the opportunity to express and or obtain personal relief in a matter or dissatisfaction that is subject to the control of the Adjutant General (TAG).
- ii. History. This revision updates the publication for administrative purposes and supersedes NGVT-HRO-JP-15, Administrative grievance Procedures, 1 April 2018.
- iii. Summary of Change. This publication has been substantially updated from the previous version and supersedes all previous guidance for Administrative Grievance Procedures.
- iv. Applicability. This policy applies to all Federal employees of the Vermont National Guard not covered by negotiated grievance procedures in a collective bargaining agreement.
- v. Proponent and exception authority. The proponent of this program is the VTNG Human Resource Office (HRO). The proponent has the authority to approve exceptions to this regulation when they are consistent with controlling laws and regulations.
- vi. Definitions. Definitions are included as enclosure 1.
- vii. Suggested Improvements. The HRO invites users to send comments and suggested improvements concerning this plan directly to:

Human Resource Office
ATTN: Labor Relations Specialist
789 Vermont National Guard Road
Colchester, VT 05446

1. References:

- a. CNGBI 1400.25A, National Guard Technician and Civilian Personnel, 11 May 2020
- b. CNGBI 1400.25 Vol 715, National Guard Technician and Civilian Personnel Voluntary and Non-Disciplinary Actions Program, 15 Sep 2021
- c. CNGBI 1400.25, CNGBI 1400.25, Vol. 752, National Guard Technician and Civilian Personnel Discipline And Adverse Action Program, 8 Nov 2021
- d. CNGBI 1400.25, Vol. 753, National Guard Technician and Civilian Personnel Adverse Action Appeals And Hearing Examiner Program, 29 June 2020

2. Responsibilities.

a. Human Resource Officer. Under the authority and direction of TAG, the Human Resource Officer (HRO) will:

- (1) Provide oversight and management of the administrative grievance program.
- (2) Provide guidance and direction to all managers and supervisors on grievance responsibilities.

b. Labor Relations Specialist. Under the authority and direction of the HRO, the Labor Relations Specialist is responsible for:

- (1) Updating and maintaining this policy.
- (2) Administering the administrative grievance program.
- (3) Ensuring that grievances are processed in accordance with this instruction.
- (4) Making copies of this policy available to all employees to whom human resources provides services.
- (5) Advising technician and civilian employees of the procedures for filing a grievance and their rights and responsibilities in doing so. The Labor Relations Specialist cannot provide representation for the technician/civilian employee concerning the merits of their grievance, but is limited to providing procedural guidance.
- (6) Advising managers on issues presented in grievances and whether types of relief requested can or cannot be granted.
- (7) Establishing and maintaining the grievance file through all stages of the grievance process.
- (8) Ensuring that employees have the right to submit relevant materials for inclusion in the official grievance file at all stages of the grievance process.
- (9) Drafting correspondence and decision letters for use by managers in processing and deciding grievances.

c. Employee. VTNG employees are responsible for:

(1) Following the provisions of this instruction when presenting grievances for consideration (a sample format for a grievance submission is enclosed as Enclosure 2).

(2) Adhering to the time limits specified in this instruction at each stage of the grievance process.

(3) Designating a third party representative in writing when desired.

(4) Cooperating in the grievance process and providing information or testimony that will aid in resolving employee grievances.

3. Employee's Representative.

a. An employee may choose an individual (other than a member of the HRO) to represent them when presenting a grievance. All representatives will be designated in writing with a statement of understanding that notices and letters provided to either the employee or designated representative will be binding on both. Additionally, the representative must provide a written statement agreeing to represent the employee.

b. Denial of a Representative. A grievance official may disallow an employee's choice of representative when that representative is an agency employee and is:

(1) A subordinate of the grievant.

(2) Is in the grievant's supervisory chain.

(3) When serving as a representative in the grievance would constitute a conflict of interest based on the proposed representative's official position with the Vermont National Guard.

4. Policy.

a. Federal employees of the Vermont National Guard may have appeal rights under the Merit Systems Protection Board (MSPB). The MSPB provides federal employees with an opportunity to appeal adverse and unfair personnel decisions. This policy does not replace your rights under the MSPB, but is in addition to your MSPB rights. Employees are urged to learn more about their rights at the MSPB website: www.mspb.gov. Additional information can be found in Section 14 of this policy.

b. It is the TAG's policy that all employees have a right to present their grievances for prompt consideration and a fair and equitable solution if warranted, or otherwise indicated. In exercising this right, employees are assured of freedom from restraint, interference, coercion, discrimination, or reprisal.

5. Exclusions.

This policy does not pertain to grievances of bargaining unit employees covered by negotiated grievance procedures in a collective bargaining agreement. Bargaining unit employees must use the negotiated grievance procedures contained in their respective union agreement as the

exclusive avenue of redress for matters of concern or dissatisfaction. Additionally, members of the military who are in a Title-32 or Title 10 status or who are called to Federal Active Duty or State Active Duty are excluded from this policy.

6. Grievable and Non-Grievable Matters.

a. Grievable Matters. Except as discussed under Non-grievable Matters, the grievance system is available to resolve matters of concern or dissatisfaction relating to the employment of an individual under the control of the TAG. This includes any matter in which an employee alleges that coercion, reprisal, or retaliation has occurred for using the grievance system. The use of the Grievance Form (Enclosure 2) is optional; however, the grievance must essentially contain all the information requested on the form, regardless of the format used.

b. Non-Grievable Matters. Examples of non-grievable actions include, but are not limited to:

(1) Complaints about the contents of published regulations and policy when the complaint is a disagreement with the policy rather than a complaint that a policy has been misinterpreted or misapplied.

(2) Non-selection for promotion from a group of properly ranked and certified candidates. Selection for promotion from a list of properly ranked and certified candidates is a function of management. This does not eliminate a grievance concerning an improper ranking if the individual feels that they should have been part of the certified list.

(3) A preliminary warning or notice of an action that, if effected, would be covered under the grievance system or excluded from coverage. This includes, for example, notices of proposed adverse action for which no decisions have been rendered, and oral warnings.

(4) An action which terminates a temporary or term promotion and which returns the employee to the position from which the employee was temporarily promoted or to a similar position at the same grade where the employee was informed in advance that the promotion is only temporary.

(5) The substance of the critical elements and performance standards of a technician's position, which have been established in accordance with appropriate regulations. The application of the critical elements and performance standards is a grievable matter; however, the critical elements and performance standards themselves, when they have been established in accordance with applicable law and regulations, are not grievable.

(6) The establishment of a Performance Improvement Plan (PIP) following an unacceptable rating.

(7) The receipt of, or failure to receive, a performance award or a quality salary increase. Decisions regarding such awards or increases are discretionary decisions and are not grievable.

(8) A merit pay determination, a merit pay increase, or the lack of a merit pay increase under the Merit Pay System, or a decision on the granting of or failure to grant cash or honorary recognition are not grievable. An individual dissatisfied with merit pay coverage may initiate a grievance on this matter.

(9) Separation or termination of an employee for unsatisfactory performance or misconduct during a probationary or trial period.

(10) Matters involving allegations of discrimination, when a discrimination complaint has been filed concerning the same matter or matters. This does not preclude an employee from filing a grievance and seeking pre-complaint equal employment opportunity counselling at the same time. However, at such time that a discrimination complaint is filed, the grievance will be cancelled and the matter will be reviewed under applicable discrimination complaint procedures.

7. General Provisions.

a. Use of Official Time

(1) Employees are authorized a reasonable amount of time during the duty day to prepare and present a grievance without loss of annual leave or pay. Employees will coordinate and receive approval from their supervisors/higher level supervisor for such time. When this coordinated time usage occurs, it will be documented in accordance with standard agency procedures using administrative leave.

b. Rejection of a Grievance. A grievance may be rejected, either in whole or in part, at any stage by a grievance official when the grievance:

(1) Does not specifically state that it is a grievance presentation in the manner required herein.

(2) Does not furnish sufficient detail to clearly identify the matter of concern or dissatisfaction that is the subject of the grievance.

(3) Does not specify the personal relief sought.

(4) Consists of a matter, or matters, excluded by this instruction or are not subject to the control of the TAG.

(5) Presented by an employee or nonemployee who is not covered by this instruction.

(6) Does not meet the time limits established herein.

c. Requests for Extensions. All requests for an extension of time limits will be made to the official that will act next in the process. Requests must be in writing stating the facts and reasons supporting the need for the requested extension. The extension request must be received by the appropriate official before the expiration of the period in question. A written response by the appropriate official will be made to a request for an extension either granting all, a portion, or none of the extension requested, and will include the rationale supporting the decision.

d. Cancellation of a Grievance. The employee upon written notification to the appropriate grievance official may cancel a grievance, either in whole or in part. The appropriate grievance official may also cancel a grievance:

(1) At the employee's request.

(2) Upon termination of the employee's employment with the Vermont National Guard, unless the personal relief sought by the employee can be granted after termination of employment with the agency.

(3) Upon the death of the employee, unless the grievance involves a question of pay or Benefits that could be granted to a designated beneficiary or the employee's estate.

(4) For failure of the employee to furnish required information.

(5) For failure of the employee to duly proceed with advancement of the grievance.

(6) A cancellation decision will be made in writing and provide an explanation of why the cancellation was made, citing the applicable portions of this instruction.

8. Alternative Dispute Resolution.

In settling grievances, employees and supervisors may first seek the use of an Alternative Dispute Resolution (ADR) process. This process is available to help resolve disputes quickly at the earliest possible stage. The ADR process is a voluntary program that uses mediation to provide an opportunity to be heard, and to facilitate resolution of a dispute in a manner satisfactory to all involved. Any employee, supervisor, or manager can request mediation if they face an issue or concern that needs to be resolved. Participation in ADR is voluntary and confidential. This process must be coordinated through the HRO and mutually agreeable to all parties prior to its use.

9. Grievance Procedures

a. Informal Grievance.

(1) An employee must present a grievance in writing to the informal grievance official, and provide a copy to the Vermont National Guard Labor Relations Specialist, within 15 days after the act or occurrence (or the date the employee became aware of the act or occurrence) that is the subject of the grievance. There is no entitlement to an oral grievance presentation unless agreed upon by the grievance official and at the employee's request. Oral grievance presentations must be followed up in writing and comply with the prescribed procedures herein.

(2) The informal grievance official is the first official within the agency who has authority over the matter at issue. This is usually the official who made the decision or committed the act or omission about which the employee is dissatisfied. Informal grievance procedures are designed to resolve the issue at the lowest level. Reference paragraph 9.a.(4) if the informal grievance process fails to adequately resolve the issue.

(3) To distinguish inquiries or correspondence from an informal grievance, the employee must specifically state in the grievance that they are making an informal grievance submission in accordance with this instruction. The grievance must furnish sufficient detail to clearly identify the matter at issue, explain the basis for the grievance, and specify the personal relief requested. Failure to state personal relief that is viable will be grounds for rejecting the grievance. The grievance should contain all available evidence, documentation, and arguments to support the grievance and to justify the personal relief requested.

(4) The grievance official will provide a written response within 15 days of receiving the grievance informing the employee of their decision, and the rationale supporting the decision. The grievance official may extend their response for good cause provided the official informs the employee of the expected date for the decision. Regardless of cause, the extension will not exceed 30 days from receipt of the grievance. Examples of good cause for this purpose include, but is not limited to:

(a) The grievance official is on leave or travel and is unavailable.

(b) Pressing mission requirements that will preclude the grievance official from providing attention to the grievance.

(c) Resolution by Written Agreement: The grievance official may resolve a grievance at any time by written decision that grants in its entirety the personal relief requested by the employee, or by written agreement signed by the employee and the grievance official.

(d) When the grievance has not been resolved to the satisfaction of the employee, the decision must state whom the employee must contact to pursue a formal grievance, and provide notice that the employee has 15 days after receipt of the informal grievance decision to file a formal grievance. The grievance official will forward the grievance file to the Labor Relations Specialist upon completion of the informal grievance.

(e) Failure to Issue Timely Decision. An employee has 15 days to file a formal grievance if the grievance official fails to issue a decision within the time limits prescribed herein.

b. Formal Grievance.

(1) An employee must utilize informal grievance procedures before presenting a formal grievance. To initiate a formal grievance the employee must first consult with the Vermont National Guard Labor Relations Specialist in the Human Resource Office. The Labor Relations Specialist will determine if the criteria has been met to proceed with a formal grievance and, if so, determine the formal grievance official.

(2) An employee must present a formal grievance in writing to the formal grievance official, and provide a copy to the Vermont National Guard Labor Relations Specialist, within 15 days of receipt of the informal grievance decision, or the expiration of the informal grievance time limits.

(3) The employee must specifically state in the written formal grievance presentation that they are making a formal grievance submission. There is no entitlement to an oral grievance presentation, unless agreed upon by the grievance official and at the employee's request. Oral grievance presentations must be followed up in writing and comply with the prescribed procedures herein. The grievance must furnish sufficient detail to clearly identify the matter at issue, explain the basis for the grievance, specify the personal relief requested by the employee, and should contain all available evidence, documentation, and argument to support the grievance and to justify the personal relief requested. The grievance must include a copy of the informal grievance presentation, a copy of the informal grievance decision (or state that one was not issued,) and should clearly state the reasons for disagreeing with the informal grievance decision if one was issued.

(4) Resolution by Written Agreement: The formal grievance official may resolve a formal grievance at any time by written decision that grants in its entirety the personal relief requested by the employee, or by written agreement signed by the employee and the grievance official.

(5) Decision without Fact-Finding: When there are no substantive facts in dispute, the formal grievance official may proceed to a decision based on the record at hand. A decision without fact-finding shall, after consultation with the HRO, be made within 30 days of receiving the grievance and:

(a) Be in writing and state that fact-finding is not required because there are no substantive facts in dispute.

(b) Include a summary of findings and the reason(s) supporting the decision.

(6) Request for Fact-Finding: If the formal grievance official is unable to reach a decision based on the record, the official has the option of requesting a fact-finding inquiry. The decision to utilize a fact-finder is within the sole discretion of the formal grievance official. After consulting with the Labor Relations Specialist, the formal grievance official will designate an employee to serve as the fact-finder who is not involved in the matter at issue in the grievance. Normally, the fact-finder will be another employee who is part of the formal grievance official's organization, who is impartial, and who is at the same grade level, or higher, as the formal grievance official. The fact finder must not occupy a position subordinate to any official who recommended, advised, influenced, or made a decision on, or otherwise is or was involved or has a personal interest in, the matter at issue in the grievance. The formal grievance official will provide a written notice informing the employee of the decision to conduct a fact-finding inquiry, and include the name and contact information for the fact finder.

(7) Fact-finding Inquiry: The formal grievance official, or designee, shall be responsible for making space and any other administrative services available to conduct an appropriate inquiry. Fact finders may take written, signed statements from individuals who have information pertinent to the grievance. Because the grievance procedure is an administrative process, such statements need not be sworn or notarized. With prior HRO approval to conduct a fact-finding inquiry:

(a) The formal grievance official will forward a copy of the grievance file to the fact finder.

(b) At the discretion of the fact finder, the inquiry may consist of a documentary review, personal interviews, group meetings, or any combination thereof.

(c) The fact finder will issue a report of findings to the formal grievance official within 30 days of the request for the inquiry. The report will contain all available evidence and supporting documentation obtained during the inquiry.

(d) The fact finder's report is advisory only and is not binding on the grievance official.

(e) Decision after Fact-Finding Report: After coordination with the HRO, the formal grievance official will issue a written decision to the employee within 30 days of receipt of the fact finder's report. The decision must include a summary of findings and the reason(s) supporting the decision.

(8) When the grievance has not been resolved to the satisfaction of the employee, the formal grievance official will:

(a) Advise the employee to contact the HRO to pursue a final review of the grievance by the TAG,

(b) Provide notice that the employee has 15 days after receipt of the formal grievance decision to request a review by the TAG.

(9) Failure to Issue Timely Decision: An employee has 15 days to request a final review by the TAG if the formal grievance official fails to issue a decision within the time limits prescribed herein.

(10) The formal grievance official will forward the grievance file to the Labor Relations Specialist upon completion of the formal grievance.

c. Adjutant General's Review. An employee may present a grievance for final review by the TAG by sending a written notice to the Labor Relations Specialist within 15 days of receipt of the formal grievance decision, or the expiration of the formal grievance time limits.

(1) The employee must specifically state in the grievance that they are making a presentation for final review by the TAG. The grievance must furnish sufficient detail to clearly identify the matter at issue, explain the basis for the grievance, specify the personal relief requested by the employee, and should contain all available evidence, documentation, and arguments to support the grievance and to justify the personal relief requested. The presentation must include a copy of the informal and formal grievance presentations and decisions (or state that decisions were not issued) and clearly state the reasons for disagreeing with the previous decisions.

(2) The Labor Relations Specialist will provide the TAG and the employee with the grievance case file within 10 days of receipt of the grievance. The case file shall, at a minimum, contain:

(a) The informal and formal grievances and the decision for each.

(b) Any written replies made by or on behalf of the employee.

(c) A summary of any oral replies made by the employee.

(d) Any other material (reports of investigation or other documents) deemed necessary for an understanding of the grievance.

(3) The employee will have 10 days to provide the TAG and HRO with any additional written submissions they wish to make.

(4) The TAG will review all information and decide, as the case may be, to either:

(a) Make the final decision based on the submissions.

(b) Request the employee make an oral presentation. The decision to have oral presentations, or not, is within the sole discretion of the TAG, and is not a matter of right. In those instances where oral presentations are determined to be necessary, both the technician and the Labor Relations Specialist will be present.

(c) Request the services of a NGB hearing examiner in accordance with TPR 752-1. The decision to use a NGB hearing examiner, or not, is within the sole discretion of the TAG.

(5) The TAG will issue a written decision, as the case may be, within 30 days after:

(a) The TAG's decision to review and render a decision on the grievance based on the submissions; or

(b) Oral presentations; or

(c) Receipt of the NGB hearing examiners report of findings and recommendations. The report is advisory only and recommendations made are not binding on the TAG.

10. Merit Systems Protection Board.

a. Purpose. The federal Merit Systems Protection Board (MSPB) exists to protect the rights of federal civil service employees. The MSPB provides federal employees with an opportunity to appeal adverse and unfair personnel decisions. When the TAG takes an appealable action against an employee, you have the right to file an appeal of that action to the MSPB:

(1) On the merits;

(2) If you allege that proper procedures have not been followed in processing the action;
or

(3) If you allege the agency took an action;

(a) Because of race, color, religion, sex, age, or national origin;

(b) For partisan political reasons not required by law; or;

(c) Resulted from discrimination because of marital status or handicapping condition.

b. Filing Deadline.

(1) You must file an appeal with the MSPB within 30 calendar days after the effective date of the action, or the date you received the decision, whichever is later. If the 30th day falls on a Saturday, Sunday, or Federal holiday, the filing deadline is extended to the next working day.

(2) You can file an appeal by mail or facsimile or by using the electronic filing option on the MSPB website. Although an MSPB appeal may be in any format, it must be in writing and contain all of the information specified in the Board's regulations, found in Title 5, Code of Federal Regulations (CFR), Part 1201. A copy of the regulations is available on the MSPB's website, www.mspb.gov. An appeal form that meets all of the Board's requirements is available at <http://www.mspb.gov/appeals/forms.htm>. You may file a hard-copy appeal by personal

delivery, facsimile, mail or commercial overnight delivery service to the MSPB Central Regional Office at the following address:

U.S. Merit Systems Protection Board
Northeast Regional Office
1601 Market Street, Suite 1700
Philadelphia, PA 19103
Telephone Number: 215-597-9960
Fax Number: 215-597-3456

(3) You may file your appeal electronically at the Board's e-Appeal site <https://e-appeal.mspb.gov>. Additional information about the adjudication of appeals before the MSPB is available at the MSPB website: www.mspb.gov.

(4) In the event you elect to file an MSPB appeal, the Board should send the Acknowledgment Order and a copy of your appeal to the following Vermont National Guard ("Agency") representative:

Judge Advocate
Office of the State Judge Advocate
789 Vermont National Guard Road
Colchester, Vermont 05446
Telephone Number: 802-338-3160

(5) Please provide a copy of any appeal you may file to the agency representative identified above at the time you file it with the MSPB.

(6) In a direct appeal to the MSPB, the agency is required to prove the basis for the action and to establish that the action was taken "only for such cause as will promote the efficiency of the service." You may raise claims that:

- (a) The agency made errors in applying required procedures (harmful error)
- (b) The action was the result of a prohibited personnel practice, prohibited discrimination,
- (c) Reprisal for whistleblowing.

(7) If you raise a claim of prohibited discrimination with the MSPB, the appeal becomes a "mixed-case" appeal. You will have the right to seek review of any MSPB rulings on discrimination claims by the Equal Employment Opportunity Commission, Office of Federal Operations.

GREGORY C. KNIGHT
Major General
The Adjutant General

**Enclosure 1
Definitions**

Term	Definition
Bargaining Unit Employee	An employee included in an appropriate bargaining unit for which the Federal Labor Relations Authority has certified an exclusive representative.
Complaint	A dissatisfaction brought to management's attention.
Days	In all actions that specify that some follow-on action must take place within a certain number of days, do not count the suspense date or the day of delivery in that number of days. The first day of the specified period is the next calendar day after delivery. Then count all calendar days, provided that the last day of the period cannot be a non-work day. If the period ends on a non-work day, the follow on action must be completed by close of business on the next scheduled workday.
Dissatisfaction	A matter of concern to an employee regarding the interpretation or application of management policies.
Employee	All non-bargaining unit federal employees of the Vermont National Guard, regardless of appointment.
Fact-Finder	A person designated to conduct an appropriate inquiry into the grievance, and to submit a report of findings to the formal grievance official. The fact-finder must be at a grade equal to, or higher, than the grievance official to include time in grade where applicable.
Formal Grievance	A matter of concern or dissatisfaction presented by an employee at the second stage of the grievance process.
Formal Grievance Official	The official with authority to issue the formal grievance decision. This official must be at a grade equal to or higher than an employee involved with the informal grievance, to include time in grade where applicable.
Grievance	A complaint by an employee for personal relief in a matter of concern or dissatisfaction relating to the employment of the individual, or a group of individuals, which is subject to the control of the TAG.
Grievance File	The informal grievance official establishes the grievance file upon receipt of a grievance. The folder containing all documents related to both the informal and formal grievance includes, but is not limited to, witness statements, written replies made by or on behalf of the employee, reports of investigations, fact finding reports, and other material or documents deemed necessary for an understanding of the grievance.

Term	Definition
Informal Grievance	A matter of concern or dissatisfaction presented by an employee at the first stage of the grievance process.
Informal Grievance Official	The first official within the agency with authority to resolve the grievance. It is the matter at issue, rather than the relief sought, that determines the informal grievance official.
Personal Relief	A specific remedy directly benefiting the grievant(s). Personal relief must constitute action concerning the employee presenting the grievance and cannot be an action concerning or against another employee, i.e. a request for disciplinary or other action affecting another individual or for an apology from another employee.

**Enclosure 2
Grievance Form**

Vermont National Guard Grievance Form					
Grievance					
<input type="checkbox"/> Informal		<input type="checkbox"/> Formal		<input type="checkbox"/> TAG Review	
Grievant					
Name					
Work Center					
City		State		Zip	
Work Phone	() -	Fax	() -		
Email					
Representative					
Name					
Work Center					
City		State		Zip	
Work Phone	() -	Fax	() -		
Email					
Grievance Official					
Name					
Work Center					
City		State		Zip	
Work Phone	() -	Fax	() -		
Email					
Notes:					

Background and Nature of Grievance (Attached additional sheets as required)			
Personal Relief Sought (Attached additional sheets as required)			
Signatures			
Grievant		Date	
Representative		Date	
Grievance Official		Date	