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§ 930.213 Use of administrative law judges on detail from other agencies.

(a) An agency that is occasionally or temporarily insufficiently staffed with administrative law judges may ask OPM to provide for the temporary use by the agency of the services of an administrative law judge of another agency. The agency request should—

(1) Identify and describe briefly the nature of the case(s) to be heard (including parties and representatives when available);

(2) Specify the legal authority under which the use of an administrative law judge is required; and

(3) Demonstrate that the agency has no administrative law judge available to hear the case(s).

(b) OPM, with the consent of the agency in which an administrative law judge is employed, will select the administrative law judge to be used, and will name the date or period for which the administrative law judge is to be made available for detail to the agency in need of his or her services.

(c) Such details generally will be reimbursable by the agency requesting the detail.

§ 930.214 Actions against administrative law judges.

(a) *Procedures.* An agency may remove, suspend, reduce in grade, reduce in pay, or furlough for 30 days or less, an administrative law judge only for good cause, established and determined by the Merit Systems Protection Board on the record and after opportunity for a hearing before the Board as provided in 5 U.S.C. 7521 and §§ 1201.131 through 1201.136 of this title. Procedures for adverse actions by agencies under part 752 of this chapter are not applicable to actions against administrative law judges.

(b) *Status during removal proceedings.* In exceptional cases when there are circumstances by reason of which the retention of an administrative law judge in his or her position, pending adjudication of the existence of good cause for his or her removal, would be detrimental to the interests of the Government, the agency may either:

(1) Assign the administrative law judge to duties not inconsistent with his or her normal duties in which these conditions would not exist;

(2) Place the administrative law judge on leave with his or her consent;

(3) Carry the administrative law judge on appropriate leave (annual or sick leave, leave without pay, or absence without leave) if he or she is voluntarily absent for reasons not originating with the agency; or

(4) If none of the alternatives in paragraphs (b) (1), (2) and (3) of this section is available, agencies may consider placing the administrative law judge in a paid, non-duty or administrative leave status.

(c) *Exceptions from procedures.* The procedures in this subpart governing the removal, suspension, reduction in grade, reduction in pay, or furlough of 30 days or less of administrative law judges do not apply in making dismissals or taking other actions requested by OPM under §§ 5.2 and 5.3 of this chapter; nor to dismissals or other actions made by agencies in the interest of national security under 5 U.S.C. 7532; nor to reduction-in-force action taken by agencies under 5 U.S.C. 3502; nor any action initiated by the Special Counsel of the Merit Systems Protection Board under 5 U.S.C. 1206.

§ 930.215 Reduction in force.

(a) *Retention preference regulations.* Except as modified by this section, the reduction-in-force regulations in part 351 of this chapter apply to reductions in force of administrative law judges.

(b) *Determination of retention standing.* In determining retention standing in a reduction in force, each agency will classify its administrative law judges in groups and subgroups according to tenure of employment, veteran preference, and service date in the manner prescribed in part 351 of this chapter. However, as administrative law judges are not given performance ratings, the provisions in part 351 of this chapter referring to the effect of performance ratings on retention standing are not applicable to administrative law judges.

(c) *Placement Assistance.* (1) Administrative law judges who are reached by an agency reduction in force and who are notified they are to be separated

are eligible for placement assistance under—

(i) Agency reemployment priority lists established and maintained by agencies under subpart J of part 351 of this chapter for all agency tenure group I career employees displaced in a reduction in force;

(ii) Agency and OPM priority placement programs under subpart C of part 330 of this chapter for all agency tenure group I, career employees displaced in a reduction in force.

(2) On request of administrative law judges who are reached by an agency in a reduction in force and who are notified they are to be separated, furloughed for more than 30 days, or demoted, OPM will place their names on OPM's priority referral list for administrative law judges displaced in a reduction in force for the grade or level in which they last served and for all lower grades or levels.

(3) An administrative law judge may file a request under paragraph (c)(2) of this section, for placement on the OPM priority referral list, at any time after the receipt of the specific reduction-in-force notice, but not later than 90 days after the date of separation, furlough for more than 30 days, or demotion. Placement assistance through the OPM priority referral list continues for 2 years from either the effective date of the reduction-in-force action, or the date assistance is requested if a timely request is made. Eligibility of the displaced administrative law judge for the OPM priority referral list is terminated earlier upon the administrative law judge's written request, acceptance of a non-temporary, full-time administrative law judge position, or declination of more than one offer of full-time employment as an administrative law judge at or above the grade level held when reached for reduction in force at geographic locations previously indicated as acceptable.

(4) The displaced administrative law judge will file with the request for priority referral by OPM a Standard Form 171, Application for Federal Employment, and a copy of the reduction-in-force notice. Also, the displaced administrative law judge may ask OPM to limit consideration for vacant positions at any grade level for which qualified to specific geographic areas.

(5) When there is no administrative law judge on the agency's reemployment priority list, but there is an administrative law judge who has been placed on the OPM priority referral list (paragraph (c)(2) of this section), the agency may fill a vacant administrative law judge position only by selection from the OPM priority referral list, unless it obtains the prior approval of OPM for filling the vacant position under §930.203a (a), (c), (d) and (e); §930.204; §930.205, §930.206; or §930.207 of this subpart. OPM will grant such approval only under the extraordinary circumstance that the candidate(s) not on the OPM priority referral list possesses experience and qualifications superior to the displaced administrative law judge(s) on the list.

(6) Referral, certification, and selection of administrative law judges from OPM's priority referral list are made without regard to selective certification or special qualification procedures which may have been applied in the original appointment in accordance with OPM Examination Announcement No. 318.

[52 FR 32403, Sept. 10, 1987, as amended at 56 FR 6210, Feb. 14, 1991]

§930.216 Temporary reemployment: senior administrative law judges.

(a)(1) Subject to the requirements and limitations of this section, the following annuitants, as defined by 5 U.S.C. 8331, who are receiving an annuity from the Civil Service Retirement and Disability Fund may be temporarily reemployed as administrative law judges by an agency that has temporary, irregular workload requirements for conducting proceedings in accordance with 5 U.S.C. 556 and 557:

(i) Annuitants who have served with absolute status as administrative law judges under 5 U.S.C. 3105; and

(ii) Annuitants who have met current examination requirements set forth in OPM Examination Announcement 318 (including the requirement to maintain a current license to practice law under the laws of a state, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the Constitution).