

§ 658.421

20 CFR Ch. V (4-1-10 Edition)

§ 658.421 Handling of JS-related complaints.

(a) No JS-related complaint shall be handled at the ETA regional office level until the complainant has exhausted the State agency administrative remedies set forth at §§ 658.410 through 658.418. Therefore, if the Regional Administrator determines that any complainant, who has filed a JS-related complaint with the regional office, has not yet exhausted the administrative remedies at the State agency level, the Regional Administrator shall inform the complainant within 10 working days in writing that the complainant must first exhaust those remedies before the complaint may be filed in the regional office. A copy of this letter shall be sent to the State Administrator. However, nothing in this provision shall prevent an ETA regional office from accepting and handling to resolution a JS-related complaint pursuant to § 658.423 or § 658.702(c).

(b) The ETA regional office shall be responsible for handling appeals of determinations made on complaints at the State level. An “appeal” shall include any letter or other writing requesting review if it is received by the regional office and signed by a party to the complaint. Upon receipt of an appeal by the Regional Administrator after the exhaustion of State agency administrative remedies, the Regional Administrator immediately shall send for the complete State agency file, including the original JS Complaint/Referral Form.

(c) The Regional Administrator shall review the file in the case and shall determine within ten (10) days whether any further investigation or action is appropriate, provided however that the Regional Administrator shall have twenty (20) working days to make this determination if legal advice is necessary.

(d) If the Regional Administrator determines that no further action is warranted, the Regional Administrator shall send this determination in writing by certified mail to the appellant within five (5) days of his/her determination and may, in the Regional Administrator’s discretion, offer the appellant a hearing before a DOL Administrative Law Judge, provided the ap-

pellant requests such a hearing in writing from the Regional Administrator within 20 working days of the certified date of receipt of the Regional Administrator’s offer of hearing.

(e) If the Regional Administrator determines that further investigation or other action is warranted, the Regional Administrator immediately shall undertake such an investigation, informal resolution or other action.

(f) If the Regional Administrator determines to reverse or modify the decision of the State hearing official or the State Administrator, the Regional Administrator shall offer in writing by certified mail each party to the State hearing official’s hearing or to whom the State office determination was sent, the opportunity for a hearing before a DOL Administrative Law Judge, provided the party requests such a hearing in writing within 20 working days of the certified date of the Regional Administrator’s offer of hearing.

(g) If the Regional Administrator finds reason to believe that a State agency or one of its local offices has violated JS regulations, the Regional Administrator shall follow the procedures set forth at subpart H of this part.

(h) If the appeal is not resolved, pursuant to paragraph (e) of this section, to the appellant’s satisfaction, the Regional Administrator may, in the Regional Administrator’s discretion, offer the appellant in writing by certified mail a hearing before a DOL Administrative Law Judge provided the appellant requests such a hearing in writing from the Regional Administrator within 20 working days of the certified date of receipt of the Regional Administrator’s offer of hearing.

§ 658.422 Handling of non-JS-related complaints by the Regional Administrator.

(a) Each non-JS-related complaint filed by an MSFW alleging violations of employment related laws enforced by ESA or OSHA shall be taken in writing, and referred to ESA or OSHA for prompt action pursuant to 29 CFR part 42.

(b) Upon referring the complaint in accordance with paragraph (a) of this