

(f)(1) A section 7401(1) employee adversely affected by a final order or decision of a Disciplinary Appeals Board (as reviewed by the Secretary) may obtain judicial review of the order or decision.

(2) In any case in which judicial review is sought under this subsection, the court shall review the record and hold unlawful and set aside any agency action, finding, or conclusion found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) obtained without procedures required by law, rule, or regulation having been followed; or

(C) unsupported by substantial evidence.

(Added Pub. L. 102-40, title II, §203(a), May 7, 1991, 105 Stat. 203; amended Pub. L. 102-405, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 115-41, title II, §208(b), June 23, 2017, 131 Stat. 878; Pub. L. 116-61, §6(7), Sept. 30, 2019, 133 Stat. 1117.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in section 4110 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

2019—Subsec. (b)(4)(A). Pub. L. 116-61 inserted “notice” after “written”.

2017—Subsec. (b)(1). Pub. L. 115-41, §208(b)(1)(A), in introductory provisions, inserted “, within the aggregate time period specified in paragraph (5)(A),” after “is entitled”.

Subsec. (b)(1)(A). Pub. L. 115-41, §208(b)(1)(B), substituted “Advance written notice” for “At least 30 days advance written notice” and “a statement” for “and a statement” and inserted “and a file containing all the evidence in support of each charge,” after “with respect to each charge.”

Subsec. (b)(1)(B). Pub. L. 115-41, §208(b)(1)(C), substituted “The opportunity, within the time period provided for in paragraph (4)(A)” for “A reasonable time, but not less than seven days”.

Subsec. (b)(3). Pub. L. 115-41, §208(b)(2), added par. (3) and struck out former par. (3) which related to requirement that deciding official render a written decision within 21 days of receipt of the employee’s answer.

Subsec. (b)(4)(A). Pub. L. 115-41, §208(b)(3)(A), added subpar. (A) and struck out former subpar. (A) which read as follows: “The Secretary may require that any answer and submission under paragraph (1)(B) be submitted so as to be received within 30 days of the date of the written notice of the charges, except that the Secretary shall allow the granting of extensions for good cause shown.”

Subsec. (b)(4)(B). Pub. L. 115-41, §208(b)(3)(B), substituted “seven business days” for “30 days”.

Subsec. (b)(5), (6). Pub. L. 115-41, §208(b)(4), added pars. (5) and (6).

1992—Subsec. (b)(1). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director” in subpars. (A) and (B).

§ 7463. Other adverse actions

(a) The Secretary shall prescribe by regulation procedures for the consideration of grievances of section 7401(1) employees arising from adverse personnel actions in which each action taken either—

(1) is not a major adverse action; or

(2) does not arise out of a question of professional conduct or competence.

Disciplinary Appeals Boards shall not have jurisdiction to review such matters, other than as part of a mixed case (as defined in section 7462(a)(3) of this title).

(b) In the case of an employee who is a member of a collective bargaining unit under chapter 71 of title 5, the employee may seek review of an adverse action described in subsection (a) either under the grievance procedures provided through regulations prescribed under subsection (a) or through grievance procedures determined through collective bargaining, but not under both. The employee shall elect which grievance procedure to follow. Any such election may not be revoked.

(c)(1) In any case in which charges are brought against a section 7401(1) employee which could result in a major adverse action and which do not involve professional conduct or competence, the employee is entitled to notice and an opportunity to answer with respect to those charges in accordance with subparagraphs (A) and (B) of section 7462(b)(1) of this title, but within the time periods specified in paragraph (3).

(2) In any other case in which charges are brought against a section 7401(1) employee, the employee is entitled, within the aggregate time period specified in paragraph (3)(A), to—

(A) written notice stating the specific reason for the proposed action, and

(B) time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer.

(3)(A) The aggregate period for the resolution of charges against an employee under paragraph (1) or (2) may not exceed 15 business days.

(B) The period for the response of an employee under paragraph (1) or (2)(B) to written notice of charges under paragraph (1) or (2)(A), as applicable, shall be seven business days.

(C) The deciding official shall render a decision on charges under paragraph (1) or (2) not later than 15 business days after notice is provided on the charges for purposes of paragraph (1) or (2)(A), as applicable.

(d) Grievance procedures prescribed under subsection (a) shall include the following:

(1) A right to formal review by an impartial examiner within the Department of Veterans Affairs, who, in the case of an adverse action arising from a question of professional conduct or competence, shall be selected from the panel designated under section 7464 of this title.

(2) A right to a prompt report of the findings and recommendations by the impartial examiner.

(3) A right to a prompt review of the examiner’s findings and recommendations by an official of a higher level than the official who decided upon the action. That official may accept, modify, or reject the examiner’s recommendations.

(e) In any review of an adverse action under the grievance procedures prescribed under subsection (a), the employee is entitled to be represented by an attorney or other representative of the employee’s choice at all stages of the case.

(Added Pub. L. 102-40, title II, §203(a), May 7, 1991, 105 Stat. 205; amended Pub. L. 115-41, title II, §208(c), June 23, 2017, 131 Stat. 878; Pub. L. 115-407, title VII, §702(a)(2), Dec. 31, 2018, 132 Stat. 5381.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in section 4110 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

2018—Subsec. (c)(2)(B). Pub. L. 115-407 substituted “to answer” for “to answer to answer”.

2017—Subsec. (c)(1). Pub. L. 115-41, §208(c)(1), substituted “notice and an opportunity to answer with respect to those charges in accordance with subparagraphs (A) and (B) of section 7462(b)(1) of this title, but within the time periods specified in paragraph (3)” for “the same notice and opportunity to answer with respect to those charges as provided in subparagraphs (A) and (B) of section 7462(b)(1) of this title”.

Subsec. (c)(2). Pub. L. 115-41, §208(c)(2)(A), in introductory provisions, inserted “, within the aggregate time period specified in paragraph (3)(A),” after “is entitled”.

Subsec. (c)(2)(A). Pub. L. 115-41, §208(c)(2)(B), substituted “written notice” for “an advance written notice”.

Subsec. (c)(2)(B). Pub. L. 115-41, §208(c)(2)(C), substituted “time to answer” for “a reasonable time”.

Subsec. (c)(3). Pub. L. 115-41, §208(c)(3), added par. (3).

§ 7464. Disciplinary Appeals Boards

(a) The Secretary shall from time to time appoint boards to hear appeals of major adverse actions described in section 7462 of this title. Such boards shall be known as Disciplinary Appeals Boards. Each board shall consist of three employees of the Department, each of whom shall be of the same grade as, or be senior in grade to, the employee who is appealing an adverse action. At least two of the members of each board shall be employed in the same category of position as the employee who is appealing the adverse action. Members of a board shall be appointed from individuals on the panel established under subsection (d).

(b)(1) In appointing a board for any case, the Secretary shall designate one of the members to be chairman and one of the members to be secretary of the board, each of whom shall have authority to administer oaths.

(2) Appointment of boards, and the proceedings of such boards, shall be carried out under regulations prescribed by the Secretary. A verbatim record shall be maintained of board hearings.

(c)(1) Notwithstanding sections 5701 and 7332 of this title, the chairman of a board, upon request of an employee whose case is under consideration by the board (or a representative of that employee) may, in connection with the considerations of the board, review records or information covered by those sections and may authorize the disclosure of such records or information to that employee (or representative) to the extent the board considers appropriate for purposes of the proceedings of the board in that case.

(2) In any such case the board chairman may direct that measures be taken to protect the personal privacy of individuals whose records are involved. Any person who uses or discloses a record or information covered by this subsection for any purpose other than in connection with the proceedings of the board shall be fined not more than \$5,000 in the case of a first offense and not more than \$20,000 in the case of a subsequent offense.

(d)(1) The Secretary shall provide for the periodic designation of employees of the Department who are qualified to serve on Disciplinary Appeals Boards. Those employees shall constitute the panel from which board members in a case are appointed. The Secretary shall provide (without charge) a list of the names of employees on the panel to any person requesting such list.

(2) The Secretary shall announce periodically, and not less often than annually, that the roster of employees on the panel is available as described in paragraph (1). Such announcement shall be made at Department medical facilities and through publication in the Federal Register. Notice of a name being on the list must be provided at least 30 days before the individual selected may serve on a Board or as a grievance examiner. Employees, employee organizations, and other interested parties may submit comments to the Secretary concerning the suitability for service on the panel of any employee whose name is on the list.

(3) The Secretary shall provide training in the functions and duties of Disciplinary Appeals Boards and grievance procedures under section 7463 of this title for employees selected to be on the panel.

(Added Pub. L. 102-40, title II, §203(a), May 7, 1991, 105 Stat. 206.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in section 4110 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

SUBCHAPTER VI—REGIONAL MEDICAL EDUCATION CENTERS

§ 7471. Designation of Regional Medical Education Centers

(a) In carrying out the Secretary's functions under section 7302 of this title with regard to the training of health personnel, the Secretary shall implement a program under which the Secretary shall designate as Regional Medical Education Centers such Department hospitals as the Secretary determines appropriate to carry out the provisions of this subchapter.

(b) Each Regional Medical Education Center (hereinafter in this subchapter referred to as “Center”) designated under subsection (a) shall provide continuing medical and related education programs for personnel eligible for training under this subchapter. Such programs shall include the following:

(1) The teaching of newly developed medical skills and the use of newly developed medical technologies and equipment.