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Human Resources Office (HRO): *Civilian Personnel*

CLASSIFICATION APPEALS

*This update printing publishes a new KYNG Regulation and supersedes KyNGR 690-511, KyANGR 40-511 dated 14 July 1983

By Order of the Governor:

JOHN R. GROVES, JR.
Brigadier General, KYNG
The Adjutant General

Official:

MICHAEL SEBASTIAN
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Human Resources Officer

SUMMARY. This regulation establishes standard requirements for classification appeals that apply to and governs the operating of the Kentucky National Guard when not in active Federal Service.

APPLICABILITY. This regulation applies to the Kentucky National Guard (KYNG).

INTERNAL CONTROL SYSTEM. This regulation is subject to the requirements of Code of Federal Regulations, parts 511 and 532. It does not contain internal control provisions and it does not contain checklists for reviews.

SUPPLEMENTATION. Supplementation of this regulation is authorized.

INTERIM CHANGES. Interim changes to this regulation are not official unless authenticated by the Human Resources Officer (HRO). Users will destroy changes on the expiration date unless sooner superseded or rescinded.

SUGGESTED IMPROVEMENTS. The proponent agency of this regulation is the HRO. Users will send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Form) directly to the HRO, ATTN: KG-HRO-TP, 220 Hawkeegan Drive, Suite 2, Frankfort, Kentucky 40601-6168

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CHAPTER 1

GENERAL PROVISIONS

1-1. *PURPOSE*

To publish procedures governing the classification appeals program and outlines steps to be followed by technicians when submitting classification appeals.

1-2. *DEFINITIONS*

a. Classification. The identification of a position as to the schedules, wage class, occupational group or family, series, title and grade.

b. Classification Appeal. A written petition made by a technician for a change in the classification of their position.

1-3. *NOTICE OF APPEAL RIGHTS*

When a decision is made on a classification action that will lead to a loss in grade or compensation, the HRO will notify the affected technician of the decision promptly and in writing. This notice informs the technician their rights of appeal to the Civilian Personnel Management Service (CPMS) in the Department of Defense (DoD), and/or National Guard Bureau (NGB). The notice will specify the time limits within which the employee must file their appeal in order to establish or preserve their rights to retroactive adjustments.

1-4. *WHO MAY APPEAL*

The employee's right to appeal the classification of their position, as explained below, are in addition to any other rights of appeal they may have under other regulations. A classification appeal is processed separately from any other appeal.

a. Technician's covered under the General Schedule (GS) may appeal to CPMS, DoD or may appeal directly to Office of Personnel Management (OPM). However, if a technician applies directly to OPM, he loses the right to appeal through CPMS, DoD channels.

b. Technician's covered under the Federal Wage System (FWS) are required to appeal to the CPMS, DoD prior to appealing to OPM.

c. Procedural requirements and time limits must be observed.

1-5. *WHAT MAY BE APPEALED*

A technician may appeal:

a. The grade, title, or series of the position they officially occupy.

- b. The coverage of the position under the FWS or the GS.
- c. A decision concerning the applicability of environmental hazard pay plans to their position.

NOTE: There must be an agreement between the technician and the supervisor that the position description is accurate. When disputes concerning the description of duties arise, they must be resolved outside the appeal channel. Final adjudication cannot take place until an accurate position description is implemented. Such cases should be handled as requests for redescription and/or reclassification rather than as classification appeals.

1-6. ***WHAT MAY NOT BE APPEALED***

A technician may not appeal:

- a. The accuracy of the official position description including the inclusion or exclusion of a major duty in the official position description.
- b. An assignment or detail out of the scope of normally performed duties as outlined in the official position description.
- c. The accuracy, consistency, or use of agency supplemental classification guides.
- d. The title of the position unless a specific title is authorized in a published OPM classification standard or guide, or the title reflects a qualification requirement or authorized area of specialization.
- e. The class, grade or pay system of a position to which the technician is not officially assigned by an official personnel action.
- f. An agency's proposed classification decision.
- g. The class, grade, or pay system of a position to which the technician is detailed or temporarily promoted.
- h. The classification of the Technician's position based on position-to-position comparisons and not standards published by OPM.
- i. The accuracy of grade level criteria contained in an OPM classification guide or standard.
- j. A classification appeal decision previously issued by OPM or DoD unless there has been a subsequent change in the governing classification standards of the major duties of the position.

1-7. ***WHEN AN APPEAL MAY BE MADE***

a. A technician may appeal the decision to exclude their position under the environmental or hazard pay differential plans or the official classification of their position at any time. However, a class action may not be appealed until:

(1) A SF 50, Notification of Personnel Action, is received when the assignment does not involve an adverse action.

(2) A notice of final decision is received where an adverse action is involved.

(3) The technician is notified by their superior or by other means when no SF 50 is required nor an adverse action is involved.

b. A technician may be entitled to retroactive benefits when a classification decision leads to a downgrade or loss of compensation and a decision on their appeal reverses the adverse classification decision. The classification appeal, however, must be timely in order to be eligible for retroactive benefits. To be timely:

(1) The initial appeal must be filed with CPMS, DoD or OPM not later than 15 calendar days after the effective date of action taken as a result of a classification decision. In order to preserve a technician's entitlement to possible retroactive entitlements, the special time limit for initial appeal is stated in the final decision notice to take downgrade action.

(2) Any appeal of an CPMS, DoD decision must be filed with OPM within 15 calendar days after the decision is received or 15 calendar days after the effective date of action taken as a result of the classification decision, whichever is later. Each OPM decision on a classification appeal will state the above time limit for a technician's further appeal.

(3) The time limits stated above may be extended if a technician can prove that they were not notified of these limits, were not otherwise aware of them, or that circumstances beyond their control prevented filing within the limits.

1-8. ***WHERE TO FILE AN APPEAL***

GS Technicians are urged to file their appeal through CPMS, DoD channels. However, if a GS technician prefers to appeal directly to OPM, they may request assistance on the procedure to be followed from the HRO. GS technician may use both procedures, but not simultaneously. If a GS technician appeals directly to OPM, they lose the right to appeal through CPMS, DoD channels. FWS personnel must appeal through NGB channels prior to appealing to CPMS, DoD. Contact the HRO for current address to CPMS, DoD or OPM.

CHAPTER 2

FILING AN APPEAL

2-1. GENERAL

a. A technician is encouraged to consult with their supervisor and the HRO for advice and assistance on the procedural aspects of preparing an appeal and may examine those unclassified official records pertinent to the case.

b. The technician may select a representative of their choice to assist in the preparation and presentation of an appeal. The agency may disallow a technician's representative when that individual's activities would cause a conflict of interest or position; or when the individual cannot be released from their position; or when the individual cannot be released from their official duties because of the priority needs of the Government or when the individual's release would give rise to unreasonable costs to the Government. The technician's representative cannot be: a supervisor with line or staff authority over the position, or any official having classification authority over the position, i.e., personnel officer or position classification specialist.

(1) The representative has the same obligation in processing the appeal as the technician does.

(2) The selection of a representative does not convey the right for the representative to be present during fact-finding investigation conducted by OPM. The representative may submit information which is significant to the classification of the position.

2-2. APPEAL LETTER

The technician's appeal letter must include:

(1) Name and mailing address;

(2) Location of the official headquarters;

(3) Exact location in the organizational structure of the unit in which employed. Include an organizational chart showing where and how the position fits into the organization's structure.

(4) Present title, pay plan, series, grade and position number of the job to which officially assigned.

(5) The requested title, series, grade or other classification action the technician considers proper.

(6) Reasons why the present classification is considered incorrect and justification for the classification considered correct.

(7) A signed statement that the technician considered the official position description to be complete and accurate description of the work performed.

(8) Reasons why the appellant believes the position is incorrectly classified, or should be brought under or excluded from the GS.

(9) A statement of facts that the appellant thinks may affect the appeal. (If desired, reference may be made to any classification standard which the appellant believes bears on the case.)

(10) Name, address, and business telephone number of the appellant's representative, if any.

2-3. *APPEAL CHANNEL*

The technician gives the appeal statement to their immediate supervisor unless the technician is a GS technician and appeals directly to the OPM (FWS technicians must file through NGB to CPMS, DoD). The supervisor forwards the statement, with their comments and recommendations through National Guard channels to CPMS, DoD. Higher supervisory officials, as well as the Adjutant General of Kentucky, may review the appeal and make comments and recommendations, but in no case will the appeal be delayed more than 10 calendar days from time of submission by the technician to time of receipt in the CPMS, DoD. The technician's statement and comments made by the immediate supervisor and other reviewers must not be changed.

2-4. *RESPONSIBILITIES*

The following are the general responsibilities in the classification appeal action process:

- a. The supervisor: Supervisors (with assistance from the HRO) will:
 - (1) Inform technicians of their right to appeal the classification of their position.
 - (2) Resolve questions as to adequacy and accuracy of duties and responsibilities as stated in technician's official position description.
 - (3) Process the appeal promptly, and inform the HRO of any significant changes in duties and responsibilities in the position under appeal.
- b. The HRO:
 - (1) Determines whether the appeal meets the requirements of a classification appeal.
 - (2) Assures there is mutual agreement between the technician and the supervisor regarding the statement of duties and responsibilities recorded on the official position description. Where there is mutual agreement, the following statement is entered on the position description: "The undersigned hereby certifies that the foregoing is an accurate and complete

description of their position.” The certificate is signed and dated by both the technician and the supervisor.

(3) Includes any comments and/or recommendations and forwards the appeal and all substantiating documents required to the Adjutant General.

(4) Ensures that all actions at or below their level of authority are completed on a timely basis, forwards the appeal to the OPM, providing National Guard Bureau - Eastern Center (NGB-EC) a copy, and sends the technician a written notification of the referral.

c. CPMS, DoD:

(1) Insures the appeal is reviewed by a qualified position classifier.

(2) Processes the appeal promptly within the time frame established and transmits an appeal decision through channels to the technician, or;

(3) Notifies the appellant, in writing, that their appeal has been referred to the OPM for final adjudication.

2-5. *CLOSING THE APPEAL*

An appeal through CPMS, DoD channels is considered closed when any of the following occurs:

a. The appellate level has rendered a decision on a classification appeal and personnel action was taken to affect correction, if necessary.

b. The technician submits a written request for cancellation of the appeal to the CPMS, DoD and/or OPM through National Guard channels.

c. The technician fails to provide requested information or otherwise fails to cooperate in the adjudication of the appeal.

d. Movement of the technician from the position, except when the appeal is the result of a classification action that resulted in the technician suffering a loss of grade or compensation.

Authenticated by:

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