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CHAPTER 430. PERFORMANCE MANAGEMENT SYSTEM

**SECTION C. WITHIN-GRADE INCREASES--GS
(To Be Used With MP-5, Pt. I, Ch. 531, Sec. D.)**

1. COVERAGE AND EXCLUSIONS

a. Coverage, Except as provided in subparagraph b, this section applies to VA PMS employees occupying permanent positions classified and paid under the General Schedule and who are paid at less than the maximum step rate of their grades. Also covered are licensed physical therapists, registered or certified respiratory therapists, licensed practical or vocational nurses, pharmacists, and occupational therapists appointed under 38 U.S.C. 7401(3) who are paid at less than the maximum rate of their grades. In addition, this section applies to employees who retain General Schedule grades and who are paid as less than the maximum rate of their retained grade (see ch. 536 of this part).

b. Exclusions. This section does not apply to:

- (1) Prevailing rate employees (see sec. D, this chapter and VA Supp. No. 532-1, this part).
- (2) Nonappropriated fund Veterans Canteen Service employees appointed under 38 U.S.C. 7802(5);
- (3) Employees receiving a retained rate of pay under chapter 536, this part.

2. REFERENCES

The following are in addition to the references in paragraph 2, section A, this chapter:

- a. 5 U.S.C. 230((b)(3); 5301(a)(2); 5335.
- b. Executive Order 11721 as amended, section 402.
- c. 5 CFR Part 531, subpart D, and Parts 1200 through 1261.
- e. VA Manual MP-5, part I, chapter 531.
- f. VA Manual MP-6, part V, supplement No. 1.5, chapter 3, section B, appendix B.

3. DEFINITIONS

The following are in addition to the definitions in paragraph 3 of VA Handbook 5430.1:

a. Acceptable Level of Competence means successful performance by an employee of the duties and responsibilities of his or her assigned position as evaluated against his or her performance plan which warrants advancement of the employee's rate of basic pay to the next higher step or the grade of his or her position, subject to the requirements in paragraph 4.b. below.

b. Equivalent Increase means an increase or increases in an employee's rate of basic pay equal to or greater than the difference between the rate of pay for the General Schedule grade and step rate occupied by an employee and the rate of pay for the next higher step rate of that grade.

c. Permanent Position means a position filled by an employee whose appointment does not have a definite time limitation of 1 year or less. Permanent position includes competitive or excepted service term appointments of more than 1 year (5 CFR 316.305) and positions to which employees are promoted on a temporary or term basis of at least 1 year (see sec. D, ch. 531, this part).

4. GENERAL POLICIES AND BASIC PRINCIPLES

a. To be awarded a within-grade increase, and employee must meet all the following requirements established by 5 U.S.C. 5335:

(1) The employee must have completed the required waiting period of advancement to the next higher step rate of the grade of his or her position (see sec. D, ch. 531, this part);

(2) The employee must not have received an equivalent increase during the waiting period (see sec. D, ch. 531, this part);

(3) The employee's performance of the duties and responsibilities of his or her assigned position must be at an acceptable level of competence. To be determined at an acceptable level of competence, the employee's most recent rating of record must be at least "Successful" (see par. 5 below).

b. Employees shall be informed of the specific performance requirements that constitute an acceptable level of competence by means of performance plans developed in accordance with the general procedures described in paragraph 10 of VA Handbook 5430.1, which require written performance standards at the "fully successful" level of achievement.

c. The effective date of within-grade increases will be as provided in section D, chapter 531, this part.

5. ACCEPTABLE LEVEL OF COMPETENCE DETERMINATIONS

a. Responsibility. Generally the Rater, as defined in paragraph 3 of VA Handbook 5430.1, is responsible for determining if the employee is performing at an acceptable level of competence.

However, if the determination is negative or requires a special rating of record, the Approval Official as defined in VA Handbook 5430.1 is responsible for the determination.

b. Basis for Determination

(1) An acceptable level of competence determination shall be based on the current rating of record. The rating of record used as the basis for an acceptable level of competence determination must have been assigned no earlier than at the end of the most recently completed annual appraisal period. If the most recent rating of record is more than 90 days old, the Rater will review current performance to assure that the rating of record reflects current performance.

(2) When it is determined that current performance is not consistent with the employee's most recent rating of record, a special rating of record must be prepared to document current performance. Special ratings of record must be approved by the Approval Official.

(3) If an employee has been reduced in grade because of unacceptable performance and has served in one position at the lower grade under written performance standards for at least the minimum appraisal period, a special rating of record at the lower grade shall be prepared and used as the basis for an acceptable level of competence determination.

c. Delay of Determination

(1) An acceptable level of competence determination must be delayed when either of the following applies:

(a) When an employee has not had at least the minimum appraisal period to demonstrate acceptable performance because he or she was not given written performance standards, as required by paragraph 4.b. above, and the employee has not been given a performance rating in any position within 90 days before the end of the waiting period; or

(b) An employee is reduced in grade because of unacceptable performance to a position in which he or she is eligible for a within-grade increase or will become eligible within (in less than) the minimum appraisal period.

(2) When an acceptable level of competence determination has been delayed, the following actions will be taken:

(a) The employee shall be informed that his or her determination is postponed to allow for minimum appraisal period. The employee shall be given written performance standards, which comply with the requirements in paragraph 4.b. above.

(b) An acceptable level of competence determination shall then be made upon completion of the minimum appraisal period and shall be based on the special rating of record prepared for the employee at the end of the minimum appraisal period.

(c) If, following the delay, the employee's performance is determined to be at an acceptable level of competence, the within-grade increase will be granted retroactively to the beginning of the pay period following completion of the applicable waiting period.

(d) If following the delay, the employee's performance is not at an acceptable level of competence, the procedures in paragraph 6c below will be followed.

d. Waiver of Determination

(1) An acceptable level of competence determination shall be waived and a within-grade increase granted when an employee has not served in any position for the minimum appraisal period under an applicable agency appraisal system during the final 52 weeks of the waiting period for one or more of the following reasons:

(a) Because of absences which are considered creditable service for within-grade increase purposes; e.g., paid leave, military service, absence for job--related illness or injury, and service credit received under the Back Pay Act (see sec. D, ch. 531, this par).

(b) Because of details to another agency or employer for which no rating has been prepared.

(c) Because the employee has had insufficient time to demonstrate an acceptable level of competence due to authorized activities of official interest to the agency not subject to appraisal under part 430 of this chapter (including, but not limited to, labor-management partnership activities under section 2 of Executive Order 12871 and serving as a representative of a labor organization under chapter 71 of title 5, United States Code); or

(d) Because of long--term training.

(2) In such a situation, there shall be a presumption that the employee would have performed at an acceptable level of competence had the employee performed the duties of his or her position of record for the minimum appraisal period (see 5 CFR 531.409(d)(2)).

6. NOTICE OF DETERMINATION

a. Timing of Notice. An acceptable level of competence determination shall be communicated to the employee in writing as soon as possible after completion of the waiting period or other period upon which it was based.

b. Favorable Determination

(1) The Standard Form (SF) 50-B, Notification of Personnel Action, shall be used to advise employees that they have achieved an acceptable level of competence.

(2) When a special rating of record was required to document current "successful" performance in support of a favorable decision, the employee will be given a copy of the special rating of record in addition to the SF 50-B. (See par. 5b(2) above.)

c. Negative Determination

(1) When it is determined that the employee's performance is not at an acceptable level of competence, a negative determination shall be communicated to the employee in writing as soon as possible after completion of the waiting period or the period upon which it was based.

(2) In addition to an SF 50-B, Notification of Personnel Action, the employee shall be given a written notice, which shall:

(a) Set forth in writing the reasons for the negative determination and the respects in which the employee must improve his or her performance in order to be granted a within-grade increase;

(b) Inform the employee of his or her right to request reconsideration, the 15-day limit, and the title of the deciding official:

(c) Advise the employee that the within-grade may be awarded whenever it has been documented on a subsequent annual or special rating of record that he or she has demonstrated sustained performance at the acceptable level of competence (successful level). A sample notice of negative determination appears as figure 3 in appendix B of this chapter.

(3) When a special rating of record was required to support the negative determination, the employee will be given a copy of the special rating or record (see par. 5b(2) above) with the notice.

7. RECONSIDERATION OF NEGATIVE DETERMINATION

a. Requesting Reconsideration

(1) An employee, or his or her personal representative, may request reconsideration by the deciding official (see par. 8 below) of a negative determination not more than 15 calendar days after receipt of the negative determination. The 15-day time limit may be extended only when:

(a) The employee shows that he or she was not notified of the 15-day time limit and was not otherwise made aware of it; or

(b) The employee was prevented from requesting reconsideration within the time limits for reasons beyond his or her control. This does not include delays to seek representation or delays caused by the employee's representative.

(2) The request for reconsideration must be in writing to the deciding official and must contain a statement setting forth the reasons that the decision should be reconsidered.

(3) The employee will designate in writing to the deciding official the name of any personal representative selected. An employee's personal representative may be disallowed only for the reasons contained in 5 CFR 531.410(c).

b. **Processing Requests for Reconsideration.** When a request for reconsideration is received by the deciding official, the Human Resources Management Officer will be promptly notified. The Human Resources Management Officer will establish a reconsideration file separate from the employee's personnel folder, which will contain copies of the following:

(1) The written negative determination (see par. 6c above);

(2) The rating of record and performance plan upon which the negative determination was based;

(3) The employee's written request for reconsideration including any designation of personal representative;

(4) Any other records which supported the basis for the negative determination (e.g., documented evidence of performance deficiencies, such as applicable production reports, samples of work products, etc.; counseling memorandums; training records; etc.);

(5) The report of investigation, if management determines that an investigation is warranted;

(6) The written summary or a copy of the verbatim transcript of any personal presentation made by the employee including the employee's written comments on the summary; and

(7) The final decision, in writing, on the employee's request for reconsideration, including a specific response to any other issues raised by the employee in the course of the reconsideration process.

c. **Other Processing Requirements**

(1) The reconsideration file shall not contain any document or information that has not been made available to the employee or his or her personal representative.

(2) An employee in a duty status shall be granted a reasonable amount of official time to review the material relied on to support the negative determination and to prepare a response to the determination.

(3) The employee and his or her representative shall be permitted, if he or she desires, to make a personal presentation in support of the reconsideration request. The official who receives the presentation shall make a written summary, unless management determines that a verbatim transcript would be more appropriate and the employee consents.

(4) The employee shall be given the opportunity to comment on the written summary of any personal presentation made under subparagraph (3) above.

(5) Employees requesting reconsideration shall be given a prompt written decision (see par. 8 below).

8. RECONSIDERATION DECISION

(a) Deciding Official. The official designated below will act as the deciding official on reconsideration requests:

(1) The facility Director or designee will be the deciding official on reconsideration requests from employees under his or her jurisdiction. The Administration Head, Assistant Secretary, Deputy Assistant Secretary, or Other Key Official, as appropriate, or designee will be the deciding official on reconsideration requests from employees in the field occupying centralized positions under their jurisdiction. The individuals designated to reconsider negative determinations may be any official in the supervisory line over the employee, no lower than the Approval Official.

(2) The Administration Head, Assistant Secretary, Deputy Assistant Secretary, or Other Key Official, as appropriate, or designee will be the deciding official on reconsideration requests from employees in Central Office or employees in the field who are not under the jurisdiction of the facility Director. The individual designated to reconsider negative determinations may be any official in the supervisory line over the employee, no lower than the Approval Official.

(3) The Secretary and Deputy Secretary may designate an appropriate official to reconsider negative determinations from employees for whom they are the Approval Official.

b. Written Decision. The written decision will be made promptly, normally within 10 calendar days of receipt of the employee's response (including any personal presentation made).

c. Results of Decision

(1) If the negative determination is sustained:

(a) The written decision will inform the employee of the reasons.

(b) The written decision will include specific responses to any other issues raised by the employee in connection with the reconsideration request.

(c) The decision letter will inform the employee of his or her right to appeal (see par. 9 below).

(2) If a negative determination is overturned on reconsideration:

(a) The decision letter will inform the employee of the basis for the decision.

(b) If the negative determination was based on a special rating of record, all copies of the rating will be removed from official files and destroyed.

(c) If the negative determination was consistent with the most recent annual rating of record, a special rating of record will be prepared to document the reconsideration decision and a copy will be given to the employee with the written decision.

(d) The decision letter will inform the employee that the within-grade increase will be effective retroactive to the original due date.

(e) The supervisor will prepare and forward VA Form 5-4652, Request for Personnel Action, to the servicing Human Resources Management Office for processing the within-grade increase.

9. APPEAL OF RECONSIDERATION DECISION

a. If a negative determination is sustained after reconsideration, the employee, if not covered by a bargaining agreement, may appeal the decision to the Merit Systems Protection Board (MSPB). However, for an employee covered by a collective bargaining agreement, a reconsideration decision that sustains a negative determination is only reviewable in accordance with the terms of the agreement.

b. for employees who may appeal to the MSPB, the following information must be included in the decision notice:

(1) Notice of the time limits for appeal to the MSPB (i.e., within 20 calendar days of receipt of the negative reconsideration decision) and the address of the appropriate MSPB office for filing the appeal (based on the employee's duty station at the time of the action);

(2) A copy of the MSPB regulations, 5 CFR Parts 1200 through 1261;

(3) A copy of the MSPB appeal form; and

(4) Notice of entitlement to request the voluntary expedited appeals procedures as described in the attachment to the appeal form.

10. CONTINUING EVALUATION AFTER WITHHOLDING A WITHIN-GRADE INCREASE

When a within-grade increase has been withheld, it may be awarded whenever a subsequent rating of record (annual or special) indicates that the employee has demonstrated sustained performance at the successful level. Generally, a new determination will be made no sooner than 90 days from the original eligibility date of the within-grade increase. For as long as the within-grade continues to be denied, each subsequent progress review and annual rating of record will be considered to be a new determination and an appropriate notice will be prepared to inform the employee in accordance with paragraph 6 above. If the progress review indicates that the employee is performing at the successful level, a special rating of record must be prepared to support granting the within-grade increase. Any time the within-grade is subsequently granted, the supervisor must prepare VA Form 5-4652, Request for Personnel Action, and forward it to the servicing personnel office for processing. The effective date of the within-grade increase will be the first pay period on or after the last date of the performance period upon which the favorable determination is based.

CHAPTER 430. PERFORMANCE MANAGEMENT SYSTEM

SECTION D. WITHIN-GRADE INCREASES--PREVAILING RATE

(To Be Used with MP-5, Pt. I, Supp. 532-1, Sec. H)

1. COVERAGE AND EXCLUSIONS

a. Coverage. This section applies to prevailing rate employees, including temporary employees, who are paid under regular wage schedules and who are paid at less than the maximum step rate of their grades. Also covered are Veterans Canteen Service employees subject to the prevailing rate system as provided in 5 U.S.C. 5342(a)(2)(C). This section also applies to covered employees who retain their grades under the provisions of 5 U.S.C. 5362 and who are paid at less than the maximum rate of their retained grade (see ch. 536 of this part).

b. Exclusions. This section does not apply to:

(1) Employees covered by section C of this chapter.

(2) Veterans Canteen Service employees not included in the definition in 5 U.S.C. 5342(a)(2)(C).

(3) Purchase and Hire employees.

(4) Employees receiving a retained rate of pay under chapter 536, this part.

2. REFERENCES

a. 5 U.S.C. 5342(a) and 5343(e)(2).

b. 5 CFR 532.417.

c. FWS Operating Manual , S8-5.

d. VA Manual MP-5, part I, supplement 532-1, section H.

3. ELIGIBILITY CRITERIA

a. Employees covered by this section will be advanced to the next higher rate of their grades at the beginning of the first applicable pay period following completion of the required waiting period, provided their performance is satisfactory and they have not received an equivalent increase in pay during their waiting period.

b. Waiting periods, creditable service, equivalent increases and effective dates will be determined in accordance with section H of supplement 532-1, this part.

c. An employee's performance is satisfactory when he or she achieves or maintains a performance rating of record of successful based on a performance plan established in accordance with paragraph 10 of VA Handbook 5430.1.

4. GENERAL PROCEDURES

a. Raters will receive advance notice from the PAID system when a within-grade increase is due for an employee under their supervision.

b. Determinations concerning whether a prevailing rate employee has achieved and maintained a performance rating of record of successful and should be advanced to the next higher step of his or her grade are similar to acceptable level of competence determinations for General Schedule employees. These determinations will, therefore, be made using the procedures established in paragraph 5 of section C of this chapter, for acceptable level of competence determinations.

c. Anytime a special rating of record is prepared to support a determination on a within-grade increase which is inconsistent with the last annual rating of record, the supervisor must prepare and forward VA Form 5-4652, Request for Personnel Action, to the servicing Human Resources Management Officer for processing.

d. The notice of determination will be as provided in paragraph 6 section C of this chapter.

e. Prevailing rate employees may request reconsideration of a negative determination under the procedures established in paragraph 7 section C of this chapter. The decision will be made in accordance with the procedures established in paragraph 8 of that section.

f. If a negative determination is sustained after reconsideration, the employee, if covered by a bargaining agreement, may grieve the decision under the negotiated procedure. If not covered by a bargaining agreement, the employee may grieve the decision under the agency grievance procedure in chapter 771 of this manual.

5. SPECIAL PROCEDURES FOR PROBATIONARY EMPLOYEES

At least 1 month before the within-grade from step 1 to step 2 is due, the Rater should review the performance of a probationary employee to assure that he or she is performing satisfactorily. If performance is not satisfactory and if employment is not being terminated before the within-grade increase is due, a special rating of record should be prepared to document performance deficiencies. At

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least 2 weeks before the due date, VA Form 5-4652 will be prepared to withhold the within-grade increase and the special rating of record will be forwarded to the servicing personnel office for processing and filing. The employee will be given the SF 50-B, a copy of the special rating of record, and a written notice of the negative determination as provided in paragraph 6c of section C of this chapter.

6. CONTINUING EVALUATION AFTER WITHHOLDING A WITHIN-GRADE INCREASE

When a within-grade increase has been withheld, it may be awarded whenever a subsequent rating of record (annual or special) indicates that the employee has achieved and maintained performance at the successful level. New determinations will be made in accordance with paragraph 10 of section C of this chapter.