

EMPLOYEE/MANAGEMENT RELATIONS

- 1. REASON FOR ISSUE:** To revise VA procedures regarding the filing of appeals to the Disciplinary Appeals Board.
- 2. SUMMARY OF CONTENTS/MAJOR CHANGES:** This handbook contains VA procedures on employee/management relations. The pages in this handbook replace the corresponding page numbers in VA Handbook 5021. Revised text is contained in [brackets]. These changes will be incorporated into the electronic version of VA Handbook 5021 that is maintained on the [Office of Human Resources Management Web site](#). Significant changes include:
 - a. Clarifies the methods for submitting an appeal to the Disciplinary Appeals Board, and
 - b. Modifies the delivery of written notice to the employee from *required signature* to *confirmed delivery*.
- 3. RESPONSIBLE OFFICE:** The Employee Relations and Performance Management Service (051), Office of the Deputy Assistant Secretary for Human Resources Management.
- 4. RELATED DIRECTIVE:** VA Directive 5021, Employee/Management Relations.
- 5. RESCISSIONS:** None.

CERTIFIED BY:

**BY DIRECTION OF THE SECRETARY
OF VETERANS AFFAIRS:**

/s/Stephen W. Warren
Acting Assistant Secretary for
Information and Technology

/s/Rafael A. Torres
Acting Assistant Secretary for
Human Resources and Administration

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PART V. TITLE 38 APPEALS TO THE DISCIPLINARY APPEALS BOARD**CHAPTER 1. GENERAL**

1. SCOPE, AUTHORITY AND DEFINITIONS. This chapter applies to Department of Veterans Affairs (VA) employees holding a full-time, permanent appointment under 38 U.S.C. 7401(l) who have satisfactorily completed the probationary period required by 38 U.S.C. 7403(b). Included in this category are: physicians, dentists, podiatrists, chiropractors, optometrists, nurses, nurse anesthetists, physician assistants and expanded-function dental auxiliaries. These categories of individuals are included in the term "employee(s)" as used in this chapter unless otherwise specified. This chapter governs appeals of major adverse actions which arise out of, or which include, a question of professional conduct or competence in VA. Major adverse actions are suspensions (including indefinite suspensions), transfers, reductions in grade, reductions in basic pay (including reductions in market pay for physicians and dentists resulting from involuntary reassignments or changes in assignments when taken for conduct and performance reasons) and discharges. A question of professional conduct or competence involves direct patient care and/or clinical competence. The term clinical competence includes issues of professional judgment.

2. REPRESENTATION. An employee of the Department may be designated by the decision official to represent management in any case before a Disciplinary Appeals Board. The decision official should direct requests for legal representation to the General Counsel or Regional Counsel, as appropriate.

3. FILING AN APPEAL TO THE DISCIPLINARY APPEALS BOARD

a. **Initiating an Appeal.** An employee subjected to a major adverse action which is based in whole or in part on a question of professional conduct or competence, may file a written notice of appeal to the Disciplinary Appeals Board under the provisions of this part. The employee may request a hearing before the Board. Any such request must be submitted in writing and accompany the employee's notice of appeal. The appeal must contain (1) the appellant's name, address, telephone number, designation of representative (if any), (2) a copy of the notice of action proposed and decision letter, (3) a statement as to whether the employee is requesting a hearing before the Board, (4) why the appellant believes the major adverse action taken was in error or should not have been taken, and (5) a statement describing the expected relief. The original appeal and the request for hearing, if any, must be submitted to the Under Secretary for Health or designee, through the Office of Human Resources Management [] (051), so as to be received within 30 days after the date of service of the written decision on the employee. Submission of the appeal must be by personal service, facsimile, [] certified mail[, or other confirmed delivery method.] A copy of the appeal must be served on the decision official who took the action being appealed and any management representative of record at the time of filing.

b. **Establishing Timeliness of an Appeal.** For purposes of computing the 30-day period for filing an appeal, the date of service of the written decision on the employee will be determined by the date of receipt by the employee of the personal delivery, [confirmed delivery of the notice], or presumed to be 5 days after depositing the decision in the U.S. mail if [confirmation of delivery is unavailable]. The Deputy Under Secretary for Health for Operations and Management will make a final decision regarding the determination that an appeal is filed untimely. The employee will be notified in writing, by letter, of this final determination. There are no further administrative appeal rights regarding the issue of timeliness.