

**DENTON COUNTY CIVIL
SERVICE RULES**

**CHAPTER IV
APPEALS**

APPEAL TO THE CIVIL SERVICE COMMISSION

4.00 APPEALS

- A. A Classified Employee may appeal a Level Three Disciplinary Action (termination, suspension without pay, or demotion) to the commission, provided such as appeal is filed in accordance with Section 4.01.
- B. But for a Level Three Disciplinary Action described in Chapter 3, Classified Employees shall have no right to appeal any adverse employee action to the Commission. Classified Employees shall have no right to bring and the Commission shall not hear any other grievance or complaint.

4.1 PROCEDURES

- A. To appeal a Level III Disciplinary Action, the employee must, no more than five (5) days after the action being appealed, deliver to the Commission (as provided in Section 2.9 of these Rules) a written notice of appeal, which must include all of the following:
 - 1. A signed statement identifying the disciplinary action being appealed, and the effective date of the action;
 - 2. The appealing employee's address, phone number and email address, and a statement as to whether the employee will be represented by counsel in the appeal;
 - 3. If the employee is to be represented by counsel, the name, address, phone number and email address of the employee's counsel;
 - 4. A copy of the notice of disciplinary action, including any information or documentation that was attached to or delivered with the notice;
 - 5. A copy of the notice of intent to take the disciplinary action, including any information or documentation that was attached to or delivered with the notice; and
 - 6. If the employee is represented in the appeal, the name, address, phone number and email address of the employee's counsel;
- B. Only an appeal as described in 4.00.A. that is timely filed in accordance with these Rules shall be set for hearing under 4.01.C below. The Commission Secretary shall send a written rejection notice in response to:
 - 1. Any request to appeal (or grieve) any action or matter not described in 4.00.A; and
 - 2. Any request to appeal an action under 4.00.A that is not timely filed

On the same day that a rejection notice is sent under this Section 4.01.B. the Secretary shall forward to the Commission members a complete copy of the rejected request and all correspondence pertaining to its submission, along with a copy of the rejection notice. The

rejection shall be placed on the next scheduled Commission Meeting agenda or, if the Chair believes the appeal was timely, he/she may call a Commission Meeting for this purpose.

At the meeting, any Commission Member who believes that the applicable correspondence shows the appeal was timely filed may make a motion to determine by vote if the rejection for untimeliness was proper. If no motion is made, no additional action shall be taken and the rejection shall stand. If a motion is made, the Commission shall determine by vote if the appeal was timely or untimely filed. If the vote determines the appeal was timely filed, a hearing shall be set and held in accordance with these Rules. If the vote determines the appeal was untimely, no additional action shall be taken and the rejection shall stand.

- C. **Setting Hearing Date.** Upon receipt of a timely filed appeal under Section 4.00.A. the Secretary of the Commission shall schedule a meeting of the Commission to hear the appeal. The hearing shall be scheduled to take place within 30 days of receipt of the appeal request by the Commission Secretary. The Secretary shall contact and coordinate with the Commission Chair and Members and select a hearing date and time (within the 30 day window) that all are able to attend; and
- D. **Setting Pre-Hearing Conference Date.** Within one day following the setting of a hearing date under 4.02.C. the Secretary shall send notice of the hearing date to the parties or their counsel. If the employee is represented by counsel, the notice shall be sent to both the address and email address provided under Section 4.01.A.3. If the employee is not represented by counsel, the notice shall be sent to both the address and email address provided under Section 4.01.A.2. The notice shall state:

On [date] [Employee name] timely filed a notice of appeal of the following disciplinary action:

[action and date of action].

A hearing on this appeal has been scheduled for [date and time of hearing setting].

Pursuant to the Denton County Civil Service Rules, a pre-hearing conference between the Commission Chair and parties (or their counsel) must take place between [date -10 days prior to hearing] and [date-five days prior to hearing]. Within [2 business days] of receiving this notice, please email the following information to the Civil Service Coordinator at [Civil Service Coordinator email address] and to the Human Resources Director [HR Director Email address]:

For each day (8:30 am - 5:00 pm) in the date range identified above, the time ranges (i.e., 8:30 am to 12:00 pm) that you are unavailable to attend the pre-hearing conference. For any times that you indicate you are unavailable, please state the reason.

Failure by either party to provide this information within 2 business days of receiving this notice may be construed as a waiver of the party's right to object to any witnesses called or evidence introduced by the other party.

The Secretary shall forward the information received from the parties to the Chair immediately following receipt, and shall set the pre-hearing conference at a time that the Chair and both parties are able to attend. If one or both parties fail to timely provide the information described in the notice above, the Secretary shall set the pre-hearing conference at a time that the Chair and any party that did timely provide that information are available.

E. Pre-Hearing Conference. At the pre-hearing conference, each party or its counsel must submit to the Chair and exchange with the other party a list of all witnesses the party intends to call. Each party shall also provide the Chair and exchange with the other party copies of all exhibits the party intends to introduce. With the Chair's assistance, the parties shall attempt to reach agreement on:

- 1) Exhibits to be submitted;
- 2) Facts to be stipulated;
- 3) Issues to be determined;
- 4) Witnesses to be called; and
- 5) Any other matters that may expedite a just resolution of the appeal.

F. Continuance. A hearing date may not be postponed or changed without the consent of the Chair of the Commission. Except as hereinafter provided, either party requesting a continuance of the scheduled hearing date shall file a written Motion for Continuance no later than the close of business five (5) days preceding the hearing date. Each Motion for Continuance must set forth the reasons the continuance is sought and must be verified.

The first continuance granted upon motion of the employee may be granted upon a showing of good cause. However, any subsequent motion for continuance by an employee must be accompanied by a waiver of right to back pay for the time period commencing on the first continued hearing date and ending on the second (or final) continued hearing date. The Commission may, upon good cause shown by the employee or their representative, dismiss the provision requiring the back pay waiver.

Any request for continuance by the County shall be granted upon good cause shown.

G. The Commission may:

1. Sustain the disciplinary action of the Appointing Authority;
2. Reduce disciplinary action with or without back pay; or
3. Reinstate the employee with or without back pay

Reinstatement with back pay means placement in the particular job assignment held by the employee at the time of the disciplinary action with payments of all back wages, minus any amount paid at termination for compensatory time and/or vacation balances, but shall not include pay for any overtime hours not actually worked by the employee.

4.2 SUBPOENAS

- A. In accordance with TEX. LOC. GOV'T CODE ANN. § 158.0095, the Commission Chair shall, upon timely request of either party to the appeal, issue *subpoenas* and *subpoenas duces tecum* for the attendance of witnesses and the production of documentary material that the requesting party considers relevant to the case. A *subpoena* or *subpoena duces tecum* request shall be considered timely if submitted to the Chairman in writing at least fifteen (15) days prior to the hearing. Requests for documentary material may include books, records, documents, papers or accounts. Subpoenas may be served by certified mail, return receipt requested, or by private server as authorized by the chair.
- B. A response to a *subpoena duces tecum* under this provision is considered to have been made under oath.
- C. A person who is subpoenaed commits an offense if the person fails to appear as required by the subpoena. An offense under this section is punishable by a fine of up to \$1,000, confinement in the county jail of not more than 30 days, or both the fine and confinement.
- D. All documents furnished by Denton County in response to a subpoena duces tecum issued under these Rules are subject to fees set by the Texas Open Records Act.

4.3 CONDUCT OF HEARING

- A. The Appointing Authority shall be entitled to have representation, appear personally and present evidence. The Appointing Authority's matter shall be presented first.
- B. The employee shall be entitled to obtain representation, appear personally, and present evidence the employee shall be allowed to decide if the hearing shall be open to the public or closed. If the employee chooses to have a closed hearing, the following people are authorized to be present:
 - 1. Commission Members
 - 2. Employee and his/her Representative
 - 3. Human Resources Director/Secretary of the Commission
 - 4. Human Resources staff
 - 5. Appointing Authority Representative(s) and their Counsel
 - 6. Court Reporter
- C. Appeal hearings are informal in nature. Therefore, technical rules of evidence shall not apply to such hearings or investigations and no informality in any of the proceedings or in the manner of taking testimony shall invalidate any order, decision, rule, or regulation made, approved, or governed by the Commission.
- D. No employee may possess a firearm in any facility where a Commission hearing is conducted.

- E. Each side will be allowed to cross examine all witnesses and provide rebuttal evidence to the facts presented. No witness without actual knowledge of relevant facts may be called to testify. The Commission has complete discretion to determine whether or not a witness (with actual knowledge) may be called, or an exhibit introduced. In making this determination, the Commission may but is not limited to considering the relevance and necessity of information/testimony (i.e., relevant but duplicative).

4.4 INVESTIGATION

The parties to an appeal may interview persons having knowledge of the acts or omissions upon which the disciplinary action was based. Notes may be written or typed into an electronic device. The following rules shall apply if the requested interview is of a county Employee:

1. Employees of the Appointing Authority. An appealing employee shall notify the Appointing Authority of his/her wish to interview any other employee(s) on county time. Upon receipt of such notice, the Appointing Authority shall without unreasonable delay make the requested employee(s) available to be interviewed. The duration of each such employee interview shall not exceed one hour. However, the appealing employee may by written request seek the Chair's permission to conduct a longer or follow-up interview. Such permission shall be granted only if the request establishes to the Chair's satisfaction that it is justified by a valid need. An Appointing Authority may interview its own employees at its discretion.
2. Employees of other County Offices. A party shall notify the interviewee's Appointing Authority of its wish to interview one or more employees of that office/department on county time. Upon receipt of such notice, the Appointing Authority may make the requested employee(s) available to be interviewed, at and for a time that the Appointing Authority deems appropriate. The Commission encourages County Appointing Authority's to make reasonable efforts to accommodate such requests.
3. County Employees outside of work. An appealing employee may directly request to interview other county employees on their own personal time. The decision to be interviewed or not is in this instance entirely up to the individual employee. Employees who do agree to be interviewed must do so on their own time.

4.5 FINAL DECISION

- A. At the conclusion of the hearing, the Commission may go into Executive Session to deliberate.
- B. Following deliberations, the Commission shall, by majority vote in Open Session, decide if the action should be sustained, reduced, if the employee should be reinstated with or without back pay.
- C. A decision to reinstate the employee or reduce disciplinary action shall become effective immediately