

MERIT EMPLOYEE RELATIONS BOARD

ORDER

FINAL

Classification Maintenance Review Appeal Procedures For Merit System Employees

BEFORE Brenda Phillips, Chairperson, Dallas Green, John W. Pitts, and John F. Schmutz, Members, constituting a quorum of the Merit Employees Relations Board pursuant to 29 **Del.C.** §5908(a).

It has come to the attention of the Merit Employees Relations Board ("Board") that the hereto attached instructions and form for appealing Maintenance Classification decisions to the Board pursuant to 24 **Del.C.** §5915 should be made available on the Internet at the Web Site for the Delaware State Personnel Office.

In reviewing the appeal procedures and the form for the appeal which were adopted by the Board on June 19, 1997, the Board has determined that there are nonsubstantive changes which should be made to improve the form and style of both the instructions and the form for the sake of clarity.

These instructions and the form for appeal of Maintenance Classification decisions are adopted by the Board pursuant to 29 **Del.C.** §10113 and are to be filed with the Register of Regulations. They are effective on the eleventh day following such publication. (September 11, 2004)

BY THE ORDER OF THE BOARD THIS 19th DAY OF AUGUST 2004.

Brenda Phillips, Chairperson
John F. Schmutz, Member
John W. Pitts, Member
Dallas Green, Member

CLASSIFICATION MAINTENANCE REVIEW APPEAL PROCEDURES FOR MERIT SYSTEM EMPLOYEES

1. The position incumbent is notified in writing of a final classification decision and is given a copy of (a) the classification specification for the new classification assigned to the position, (b) Classification Maintenance Appeal Procedures for Merit System Employees, (c) the classification appeal form, and (d) the name of the designated agency representative (normally the agency personnel administrator or a high level personnel professional, or if the agency does not have a personnel professional, a high level agency manager). The classification decision may be appealed to MERB within thirty (30) calendar days from the notification to the employee of the classification decision.
2. The designated agency representative should within ten (10) calendar days offer to meet with the employee(s) considering filing a classification appeal to explain the process and answer questions about the appeals process. These meetings may be with individual employees or with groups of employees.
3. Within thirty (30) calendar days from the date the employee is given written notice of the final classification decision from the designated agency representative, the employee who decides to appeal must complete the employee portion of the classification appeal form (items 1-4), sign it and send copies of the appeal to the designated agency representatives and to MERB. Receipt by MERB with items 1-4 completed and signed serves as the basis for timeliness (faxed copies are acceptable).
4. The Merit Employee Relations Board will forward a copy of the employee's appeal to the State Personnel Office Classification Unit upon receipt. Within ten (10) calendar days from the receipt of the employee's signed appeal, the designated agency representative has the hiring agency head or designee complete the agency's portion of the classification appeal form (items 5-7), and submit the agency's portion of the employee's appeal to the Merit Employee Relations Board.
5. Within ten (10) calendar days after receipt of the employee's appeal, MERB notifies the agency head, the designated agency representative, the employee, the Director of the State Personnel Office, and the State Personnel Classification Unit, in writing, that the appeal has been received and is assigned to an Independent Reviewer. The State provides access to all documentation pertaining to the classification decision.

6. Within thirty (30) calendar days of assignment of the appeal, the Independent Reviewer reviews the appeal form as filed by the employee and as completed by the agency and any other relevant documentation that was used in the classification decision provided by the State Personnel Classification Unit. The Independent Reviewer may contact the employee and agency via the designated agency representative, and/or the State Personnel Classification Unit, to get additional information or clarification. Based on this review, the Independent Reviewer shall prepare a written report of findings and recommendations concerning the classification appeal and shall submit it to MERB, the employee, the Director of the State Personnel Office, and the Manager of the Classification Unit. In unusual circumstances, the Board may authorize the Independent Reviewer an additional thirty (30) calendar days to issue findings and recommendations to the parties.

When the independent Reviewer makes his/her findings and recommendations, he/she shall consider whether:

 - a. One or more major duties and responsibilities and/or major knowledge, skills and abilities are not included in the class specification;
 - b. Another class specification is clearly a more accurate description of the position.
7. Within thirty (30) calendar days of the date of the Independent Reviewer's findings and recommendations, the State Personnel Director and the employee shall accept, deny, or ignore the findings rendered by the Independent Reviewer and notify, in writing, the Merit Employee Relations Board.
8. If the Independent Reviewer's findings and recommendations are accepted by the employee and the Director, MERB is required to also accept the findings and to so notify the parties.
9. If the Independent Reviewer's findings are rejected or ignored by the Director or employee within (30) calendar days after the Independent Reviewer's findings and recommendations, MERB has sixty (60) calendar days to conduct a hearing. At this same time, the appeal file containing the PCQ/JAQ, the written analysis by the Independent Reviewer, and any other documentation provided by the employee or agency and the State Personnel Classification Unit is available for review by the employee and the Director. Parties may call the Merit Employee Relations Board if he/she wishes to schedule a time to review the file.
10. The employee and/or the Director may respond in writing to the findings and recommendations of the Independent Reviewer. Such written response, which may include affidavits, should be filed with MERB, served upon the opposing party, and provided to the Independent Reviewer within thirty (30) days of the issuance of the Independent Reviewer's findings and not less than ten (10) days prior to the scheduled hearing for oral argument.
11. The Independent Reviewer shall forward a decision binder containing the appeal form completed by the agency and the employee, and any pertinent documentation from the State Personnel Classification Unit's classification maintenance review decision file, and the written findings and recommendations by the Independent Reviewer and any written responses thereto and any other pertinent material to the members of MERB not less than ten (10) calendar days prior to the scheduled hearing for oral argument.
12. The Board shall hold a hearing at which all parties may attend and have the opportunity to present brief oral arguments. The Independent Reviewer will summarize the grounds for the appeal, the primary points made by the parties, and his/her findings and recommendations based on review of the facts. The appellant will have the opening argument (normally no more than 15 minutes) followed by the Director (normally no more than 15 minutes), and the appellant may close (normally 5 minutes). The Board may question the parties and the Independent Reviewer as deemed necessary.
13. Within fifteen (15) calendar days of the hearing, the Board shall render a final and binding decision considering the following criteria:
 - (a) the findings of the Independent Reviewer;
 - (b) the Director's initial determination;
 - (c) the Director's response to the Independent Reviewer's findings;
 - (d) the employee's response to the Independent Reviewer's findings;
 - (e) the oral argument;
 - (f) the consistency with other existing classified positions of a similar nature;
 - (g) the minimization of the number of classifications.
14. The Board shall notify the employee and the State Personnel Director, in writing of the Board's decision.

Adopted by the Board: June 19, 1997

Revised: April, 2004

CLASSIFICATION APPEAL FORM

SECTIONS TO BE COMPLETED BY AGENCY PERSONNEL

Position Number: _____
Department/Division/Section: _____
Date Employee was Given Notice of the Classification Decision by the Agency: _____
Date Appeal was Submitted by Employee: _____
Name of Personnel Representative: _____
Title: _____
Phone No. _____
Fax No. _____
Date Bargaining Unit Representative Notified of Appeal (if applicable): _____

Note: Items 1-4 are to be completed by the employee who is appealing the classification decision. Items 5-7 are to be completed by the Division Director and/or the appropriate agency manager who is knowledgeable of the duties and responsibilities of the employee in this position.

TO BE COMPLETED BY EMPLOYEE

1. Name: _____
Mailing Address - Workplace: _____
(Include State Mail Code, if known) _____

Mailing Address - Home (optional): _____
Work Phone No. _____
Work Fax No. _____
Class Title: _____
(Former Title)

(New Title)

Date Employee was Given Notice of the Classification Decision by the Agency: _____
Agency: _____

2. Grounds for classification appeal. (See guidelines for classification appeals to the Merit Employee Relations Board).

A. ___ One or more major duties and responsibilities or major knowledge, skills and abilities are not included in the class specification.

B. ___ Another class specification is clearly a more accurate description of the position.

3. A. If you checked 2(A) or 2(B) above, list the duties and responsibilities that are assigned to your position that are not included in the new class specification.

3. B. If you checked 2(A) or 2 (B) above, list the knowledge, skills and abilities that are required for your position that are not included in the new class specification. (Please note: personal qualifications and job performance of employees are not relevant factors in classifying positions).

4. Relief sought (check one of the following):

1. ___ Revisions to class specifications.

2. _____ Reclassification of position to:

Name of Classification

(If No.2 was checked, the requested class title must be listed.)

TO BE COMPLETED BY AGENCY MANAGER OR DIVISION DIRECTOR

5. Name of Manager: _____
Phone No. _____ Fax No. _____
Title: _____

6. If the employee completed section 3(A), please verify that each of the duties and responsibilities listed are assigned to the position. How long have these duties been assigned to this position? If possible, indicate the specific date these duties were assigned.

If the employee completed section 3(B), please verify that the knowledge, skills and abilities listed are required to perform this job. (Please note: Personal qualifications and job performance of employees are not relevant factors in classifying positions).

EMPLOYEE DATE

IMMEDIATE SUPERVISOR DATE

DIVISION DIRECTOR DATE

PERSONNEL REPRESENTATIVE DATE

Appeal form adopted by the Merit Employee Relations Board: June 19, 1997
Revised: April, 2004

8 DE Reg. 599 (10/01/04)