



LEVEL ONE GRIEVANCE PROCESS AND PROCEDURES WEST VIRGINIA DIVISION OF HIGHWAYS

If you are a permanent state employee, the Grievance Statute allows you to file a grievance and select either a hearing or a conference. The Commissioner of Highways has designated his authority to hold Level One Grievance hearings and conferences to the Grievance Administrator. After a grievance has been filed at Level One, the Administrator will assign the grievance to a designated evaluator or will hear the claim herself.

Generally speaking, a conference is less formal and may be recorded for aiding in issuing a decision. The grievance evaluator is permitted to provide information to employees (e.g. policies, statutes, rules, etc.) and has the ability to contact all parties and offer suggestions for resolution. A conference will be held within twenty (20) business days of receipt of the grievance form. An agency lawyer will usually attend to represent the agency.

A hearing is formal; agency lawyers are always involved. Witnesses may be presented by either side to provide testimony. The grievance evaluator cannot discuss information with the parties involved prior to the hearing.

If you select a Conference:

The Grievance Evaluator will conduct further investigation, as necessary, of the facts underlying the grievance. For example, the evaluator may collect documents or interview other employees to determine relevant facts.

The Level One Decision will be in writing and issued within **twenty (20) working** days from the date of the conference. It will be sent to you, the West Virginia Public Employees Grievance Board, and the DOH Legal Division. If your grievance is denied, the decision will also tell you what to do if you wish to continue the grievance process.

If you select a Hearing:

A Grievance Hearing is similar to a trial. However, it is typically much shorter and less formal than a trial. The Grievant is allowed to contact the evaluator with questions regarding how the hearing will be conducted. However, because the grievance evaluator must listen impartially to the evidence, they can only consider facts and arguments presented when all parties are present. For this reason, the evaluator cannot speak with the agency's lawyer or representatives about your grievance in your absence, and you cannot discuss the facts of your case with the evaluator unless the agency's lawyer is present. If you write to the evaluator, you must also, at the same time, send a copy of your correspondence to the agency's lawyer.

The grievance evaluator will oversee the hearing, ruling on procedures, the evidence that the parties may use, and any objections. If you plan to submit evidence at the hearing, you must have enough copies for all parties (at least 3 copies).

After starting the recording equipment, the evaluator will start the hearing by introducing the case and by asking everyone present to introduce themselves. The evaluator will also identify who has the burden of proof. In disciplinary matters the employer must prove the case, so the employer is the first to provide an opening statement, to provide evidence, and to give a closing statement. In non-disciplinary matters, such as non-selection cases or other issues, the Grievant will have the burden of proving their case. You will have the first opportunity to give an opening statement, to examine witnesses, and to give a closing statement. This means that in a non-disciplinary grievance, you must have the majority of evidence in your favor in order to prevail at the hearing (meet the burden of proof).

Both parties have the opportunity to present evidence in a grievance hearing. Your evidence may consist of relevant documents or witness testimony. Each witness must be sworn to tell the truth before providing testimony. You may testify yourself and you may be called as a witness by another party in a non-disciplinary grievance; in a disciplinary grievance, you may not be called as a witness, but you may choose to testify. The grievance evaluator has the authority to limit witness testimony based on relevance, cumulativeness, repetitiveness, etc.

As discussed above, the party with the burden of proof will have the first opportunity to testify and to call witnesses. The party who has the burden of proof presents all of his or her witnesses and other evidence and then the other party may do the same.

Each witness can be questioned by both parties: first the party who called the witness (direct examination), then the other party (cross examination). Each party then gets a second opportunity to ask follow-up questions (re-direct and re-cross examination).

The Grievance Evaluator's decision will be in writing. The decision will be sent to you, the West Virginia Public Employees Grievance Board, and the DOH Legal Division within **twenty (20) working** days of the hearing. The decision will include information about how you may continue the grievance process if you are not satisfied with the decision.

If you need to file a claim you may obtain your form from the Grievance Board website at pegb.wv.gov, or the DOT Intranet. Please send forms by US mail or by email to DOHGrievances@wv.gov or Sandra.j.castillo@wv.gov. Please note that grievance forms cannot be filed by interdepartmental mail.

For any questions, please contact Sandra Castillo at 304-414-7133.