

Internal Panel External Adjudicator [39]

NOTE: The content of this document has not been reviewed by legal counsel, nor does it represent a consensus view of the Design Team or indicate any kind of preference among options presented to the Senior Review Committee.

Summary Description:

Under this option, one adverse action system covers permanent employees and demotions, removals, and suspensions based on misconduct or poor performance. This option also establishes three-member internal decision panels jointly appointed by employees and management and regionally located who conduct hearings and decide adverse actions. This option further provides a one-step appeal of removals and demotions by an external adjudicator (e.g., an Arbitrator, MSPB Administrative Judge, or MSPB Board Member); and restricts adjudication of "mixed-cases" to the Equal Employment Opportunity Commission.

Key Features:

Adverse Actions

- Employees are either permanent or non-permanent, and permanent employees--including bargaining unit employees--are covered by adverse action procedures, unless specifically excluded. This option does not recognize excepted service, competitive service, or other similar distinctions.
- Timeframes are shorter, counted in terms of workdays, and require strict application and enforcement.
- Suspensions longer than 2 workweeks are prohibited, unless the suspension is taken as an immediate adverse action, mandated by statute, or the result of mitigation by the internal decision panel or external adjudicator.
- Immediate, temporary action may be taken for suspected or realized security breaches, including those that are not based on "national" security reasons.
- Establishes regional, three-member internal decision panels comprised of an employee, a supervisor, and a manager staffer who serve 3 year terms; are appointed jointly by management employees; conduct very limited hearings, and issue majority decisions to sustain, reverse, or mitigate a proposed action based on proof of efficiency of the service and appropriate progressive action.
- Employees have 20 hours of official time to prepare an oral and or written reply/hearing.

Appeals

- Adverse actions retained under MSPB appellate authority are excluded from internal adverse action procedures and may be appealed directly to the MSPB (e.g., RIF, suitability, and furloughs longer than 30 days).
- Allows employees to choose an external adjudicator who is an arbitrator, an MSPB AJ, or an MSPB board member who has discretion to conduct hearings and issue bench decisions or issue summary judgment. When an arbitrator serves as the adjudicator, she or he determines how the parties will share fees based on a fair and affordable (e.g., "a sliding scale rate") method, or prior agreement between the parties and the arbitrator. The decision of the external adjudicator is not precedential.
- Final adverse actions taken against permanent employees are appealable, except for permanent employees who did not have MSPB appeal rights prior to the DHS transfer.
- Significantly reduced timeframes (e.g., the decision is due within 20 workdays after the hearing or receipt of the appeal.)
- Requires "efficiency of the service" and "appropriate progressive discipline" burdens of proof; and "sufficient evidence" standard of proof.

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- The EEOC has exclusive appellate authority for mixed-cases. Ideally, EEO appeals should be appealed to the external adjudicator to minimize the “multiple forum problem”, but EEOC authority is not waivable under current DHS statute.

Sub-Options:

- The composition of the internal decision panels might be reconfigured to include, for example, two employees/union reps (instead of one), and one management representative (instead of two); or ad hoc/collateral duty members rather than term members.
- The internal decision panels also could serve as deciding officials over grievances, creating a single three-step process for adverse actions and grievances: For example, Step one- proposal or written grievance to supervisor; Step two – oral and or written reply/grievance; and Step three- decision. The grievance feature of the option could include classification, pay, and or performance appraisal as grievable matters.
- The authority to declare an emergency or non-national security breach might be required by an SES staffer, rather than at the supervisory level; or required at the supervisory level with concurrence from an appropriate SES staffer.
- An employee may reply to the panel covering his or her region or to an out-of-region panel with some or all travel expenses covered by the directorate. The directorate reserves the right to select the out-of-range hearing format of least expense (e.g., teleconference, in-person, videoconference).
- Time frames could be longer and or calendar days used.

Relation to Other Options:

- This option assumes a labor relations option that does not have collective bargaining over adverse action procedures and processes, or official time for responding to a proposed action. That is, there is one adverse action and appeals system that covers both bargaining unit and non-bargaining unit employees, and related official time is pre-determined by statute.
- This option works well with a performance management option that incorporates supervisory and management expectations for correcting and resolving poor performance and misconduct as a critical performance element.

Implications (This section contains “possible advantages/benefits” and “possible problems/challenges” and “other implications” suggested by design team members. The views expressed in these “implications” represent the opinions of one or more members of the design team and therefore reflect sometimes opposing points of view. These opinions do not reflect the collective judgment of the entire design team on any of the issues addressed, nor have they been reviewed by legal counsel.):

Possible Advantages/Benefits

- Could simplify adverse action and appeals coverage by designating all employees either permanent or non-permanent; eliminates unnecessary distinctions such as competitive service, excepted service, term, and probationary.
- Restricts suspensions to 10 workdays, thereby recognizing that longer suspensions tend to be more punitive than corrective.
- Provides for direct appeal to an external adjudicator of some adverse actions, such as suitability determinations, thereby eliminating unnecessary and duplicative internal review.
- Provides flexibility for immediate adverse actions based on security reasons.

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- Quick processing of adverse actions and adjudication of appeals, thus addressing the “it takes too long” problem.
- Provides for collaboration in the adverse actions process by allowing employee input and union representation on the internal decision panels.
- Simplifies the burden and standard of proof. For example, eliminates the burden of proving the legal elements of an adverse action charge (e.g., a charge of theft currently requires proof of intent).
- Limits appealable actions to adverse actions that are final in nature, perhaps minimizing the number of adverse actions that are subject to third-party review.
- Restricts adjudication of mixed-cases to the Equal Employment Opportunity Commission, possibly minimizing the “multiple-forum/multiple-appeal” problem.
- Requires an appeals process that is not based on Federal Rules of Procedure, such as rules of evidence or rules of discovery.
- Does not require creation of a new trier of fact, uses existing arbitration and MSPB resources.

Possible Problems/Challenges

- On one hand, employees might not perceive the internal decision panel as fair, because two members are from the supervisory/managerial/SES ranks. On the other hand, traditional up-the-chain internal processes only provide management review, and not peer review as this option does.
- Some are concerned about the due process implications of eliminating appeal rights for suspensions longer than 14 days and authorizing *post action due process* for emergency suspensions.
- Granting a stay request from the OSC could prove problematic given the Special Counsel’s current backlog; and retaining the current overlap of appeal to both OSC and MSPB fails to address the multiple-forum problem. In such instances, regulatory or statutory change, or a Memorandum of Agreement may be necessary to allow for no more than two external avenues of redress (e.g., external adjudicator and U.S. Court of Appeals for the Federal Circuit) for prohibited personnel practices such as whistleblower claims.
- Involvement of an MSPB Administrative Judge or direct involvement of a Board Member would require modification of MSPB procedures. Will MSPB regulation or statute have to be rewritten? Is it sufficient to include the modifications under DHS Appeals regulations? Can the MSPB make the modifications internally under 1201.12, “Revocation, Amendment, or Waiver of rules,” or some other Board authority? Or, will an MOA between DHS and MSPB addressing how MSPB will adjudicate appeals from DHS employees suffice?
- Supervisors might be influenced to propose a removal because a long suspension is not an available penalty.
- Timeframes might be unrealistic.
- Sharing arbiter fees might be cost prohibitive for some employees. However, a sub option is for the Department to pay a large portion or all of the fees.
- Eliminating suspensions in excess of 10 workdays might result in removal of employees who would not otherwise be removed from Federal service.
- Lack of clarity on establishing lengths of probationary periods and criteria to be used may lead to inconsistent and/or arbitrary results.
- Imposing statutes of limitations management for taking actions could result in actions not being taken that should.

Other Implications

- The provisions of this option will have to be reviewed for consistency with the Homeland Security Act.

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Costs

- Arbitrator fees may be prohibitive to employees, thereby limiting the true choice of an external adjudicator; and resulting costs from any delays in securing an arbitrator in a timely manner may be harmful to the credibility of the appeals process.
- Any costs associated with revising MSPB statute and regulation, and any special work arrangements with MSPB such as contract work of MSPB judges.
- The set-up and recruitment costs of the regional panels and related administrative costs of the adverse actions system (e.g. data reporting costs, office space).

Evaluation in Terms of Guiding/Design Principles:

Mission Centered

- This option encourages supervisors and managers to take adverse actions because it is a simple and quick process, and supervisors are held accountable for failure to take necessary action. Addressing and resolving poor performance and misconduct will allow employees to correct their deficiencies and re-direct their energies to mission accomplishment; and allow other employees to focus on mission accomplishment without the distractions of observing a poor performer or an employee with unacceptable conduct go on unresolved.

Performance Focused

- This option provides a tool for holding a line employee and manager accountable for poor performance or misconduct through suspension, demotion, or removal. This option specifically requires corrective or adverse action against a supervisor or manager who fails to take timely corrective or adverse action against an employee whose performance or conduct is unacceptable. As stated above, this option works well when there is a performance management system/performance plan that incorporates expectations for supervisory and management responsibility for correcting and resolving poor performance and misconduct.

Contemporary and Excellent

- This option has many characteristics of a contemporary and excellent system, such as shorter timeframes for adverse actions and appeals, simplifying employee population by permanent or non-permanent status, covering bargaining unit employees under the same system as non-bargaining unit employees, providing greater than basic due process, flexibility to take immediate, temporary adverse action in cases of directorate or national emergency or security breach; streamlining appeals based on discrimination, a one-step appeals decision, a simplified cause standard, and built-in evaluation/reporting requirements.

However, this option could be more contemporary if it did not provide for appeals of RIF, suitability, and furlough decisions. In mainstream business, such decisions are typically considered management decisions since management is in the best position to understand the proper response to a lack of funds or work, for example, that best benefits continued business operations.

Generate Trust and Respect

- This option has a good chance of generating trust and respect by collaborating with employees on the selection of regional panel members, including employees as regional panel members, and by providing employees third-party administrative review of adverse actions that are final in nature.

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Based on Merit System Principles and Fairness

- This option reinforces merit system principles of holding employees accountable on the basis of their performance (and conduct), provides a tool to help managers manage conduct and performance effectively, and specifically facilitates OSC's role in the adverse action process and prohibited personnel practices; provides greater than basic due process protections in the adverse action and appeals processes, and ensures efficient and expeditious adjudication of adverse actions and appeals through a one-step decision, quick timeframes, and very few appealable actions.

Transition & Implementation:

Transition and implementation should be reasonably quick and in phases: For example, Phase I - clarification of the need to change MSPB statute or regulations, and clarification regarding any required constitutional due process for suspensions; Phase II - develop relevant DHS policy, training, employee communication, identify regions, and establish any necessary MOAs, such as between DHS and the American Arbitration Association (AAA), and or the Federal Mediation and Conciliation Service (FMCS); Phase III - recruitment and placement of panels; and Phase IV - department-wide implementation.

**Detailed Description
By System Component and System Element**

D Discipline/Adverse Action System	
System elements:	Summary description:
<p>1</p> <p>Coverage</p> <ul style="list-style-type: none"> - Employees - Actions - Probationary/ trial period 	<p><u>Employees covered.</u> Permanent employees including employees in a bargaining unit.</p> <p><u>Actions covered.</u> Covered adverse actions include suspensions without pay and duties, demotions in grade or pay, and removals.</p> <p>No suspension shall last longer than 10 workdays, unless the suspension is taken as an immediate adverse action, mandated by statute, or the result of mitigation by the internal decision panel.</p> <p><u>Probationary/trial period.</u> The Department and or its directorates may determine position/classification specific probationary/trial periods not-to-exceed 3 years.</p> <p><u>Specific exclusions.</u> Presidential appointees, administrative law judges, employees in confidential, policy-making, policy-determining, or policy-advocating positions; reemployed annuitants, any employee serving a supervisory probationary period who is returned to the grade and or pay held immediately prior to the supervisory probation, furloughs for longer than 30 days, RIF actions, and suitability determinations.</p> <p>A probationary employee is any non-permanent employee, such as an employee serving a conditional, probationary, trial, temporary, indefinite, or term appointment. The human resources (HR) policy office of the Department may develop adverse action procedures covering non-permanent employees, and other excluded employees or actions.</p> <p>Under this system, employees are either permanent or non-permanent; there is no probationary, competitive service, excepted service, or other similar distinctions.</p>
<p>2</p> <p>Basic Process</p> <ul style="list-style-type: none"> - Advance notice - Reply opportunity - Rep. right - Decision - Timeframes - Cause 	<p><u>Advance notice.</u> The employee's immediate supervisor shall provide the employee an advance written notice that specifies the reasons for the proposed action, explains the evidence supporting the charge, includes a photocopy of the evidence supporting the charge, and informs the employee of his or her right to reply and to be represented during the adverse action process. The directorate may not rely on evidence that cannot be disclosed to the employee or his or her representative.</p> <p>When a supervisor determines that immediate, temporary removal from the workplace without duties and pay is necessary (e.g., reasonable suspicion of criminal activity, emergencies, potential or realized security breach), the supervisor may provide oral notice and reasons for the action. The supervisor must provide a written proposal notice as soon as practicable after the oral notice or immediate action.</p> <p><u>Reply.</u> Employees shall have 10 workdays after receipt of the written proposal notice to request a very limited hearing, and submit a reply orally and or in writing to the internal decision panel.</p>

D Discipline/Adverse Action System	
System elements:	Summary description:
	<p>An employee alleging discrimination must raise their allegation with an EEO counselor within 10 workdays after receipt of the proposal notice. If the final agency decision concludes that a proposed adverse action is not discriminatory, the action shall be effected, and the employee may appeal to the EEOC. If the final agency decision concludes that a proposed adverse action is discriminatory, the action shall be withdrawn.</p> <p>Employees alleging reprisal for whistle blowing or some other prohibited personnel practice (PPP) must submit its complaint to the Office of Special Counsel (OSC) within 10 workdays after receipt of the proposal. An employee may request that the Special Counsel seek to delay, or "stay," an adverse personnel action pending an OSC investigation. If the Special Counsel has reasonable grounds to believe that the proposed action is the result of a prohibited personnel practice, the OSC may ask the internal decision panel to delay the personnel action. If the panel does not agree to a delay, the OSC may then ask the MSPB to stay the action, as applicable. The OSC cannot stay a personnel action on its own authority. Ideally, the external adjudicator should handle PPP complaints to minimize the "multiple forum problem," but OSC authority is not waivable under current DHS statute.</p> <p><u>Representation.</u> An employee shall have the right to representation of his or her choice during the adverse action process. The choice of representative is subject to directorate concurrence when a directorate determines a conflict of interest exists.</p> <p><u>Decision.</u> The internal decision panel shall issue its majority decision to mitigate, reverse, or sustain the proposed action within 5 workdays after the oral reply, or written reply if the employee waives the hearing.</p> <p>The decision shall state whether the proposing official met the burden of efficiency of the service and appropriate progressive action; the time limits for appealing to the external adjudicator, the e-mail or mailing address or fax number for filing the appeal, the e-mail or mailing address or fax number to send the directorate copy of the appeal, and a copy of the external adjudication procedures.</p> <p>If the directorate meets its burden of proof, the decision must sustain the proposed action, unless the employee proves the directorate is wrong in proposing the action (e.g., she or he did not commit the charged misconduct or poor performance, the proposed action is too severe).</p> <p>The decision may address back pay issues, as applicable. Panel decisions are not precedential, but the HR policy office shall monitor panel decisions for fairness.</p> <p><u>Time frames.</u> An immediate supervisor must issue a written proposal notice for adverse action within 5 workdays after knowledge of alleged misconduct or poor performance, except when the employee is immediately and temporarily removed from the workplace. (Similarly, an immediate supervisor shall take corrective action within 5 workdays after knowledge of alleged misconduct or poor performance.)</p>

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D Discipline/Adverse Action System	
System elements:	Summary description:
	<p>The internal decision panel may reverse or mitigate a proposed adverse action based on an untimely proposal.</p> <p>Supervisors or managers who fail to timely correct and or resolve known poor performance or misconduct shall receive appropriate corrective and or adverse action.</p> <p>An employee shall have a total of 20 hours official time to prepare his or her oral and written reply.</p> <p>Reply and decision deadlines may be extended by 5 workdays in the event an out-of-region decision panel holds the hearing.</p> <p>However, time frames are to be strictly applied with very few extensions allowed, such as for medical incapacitation. The HR policy office of the Department must develop policy to facilitate compliance with and accountability for meeting statutory time frames.</p> <p><u>Cause.</u> A directorate may take appropriate progressive action to promote the efficiency of the service. The efficiency of the service is met when the supervisor proves the alleged misconduct or poor performance occurred, is related to the employee's ability to accomplish job duties or some other government interest, and violates directorate conduct or performance standards. Appropriate progressive action is action taken after a prior record of corrective action (e.g., documented oral counseling or written reprimand), unless the misconduct or poor performance warrants immediate and temporary adverse action, requires a mandatory penalty (e.g., misuse of government vehicle), or is of such gravity that progressive action is not appropriate.</p> <p>The period of time between prior corrective action and proposed adverse action serves as an employee's "opportunity to improve" poor performance or misconduct.</p> <p><u>Internal decision panels.</u> The panels shall consist of 3 full-time members who are regionally located, serve a 3 year term, and are jointly appointed by management and employees/union representatives as described below.</p> <p>One member shall be a staff employee/union representative, another member a supervisor, and the other member a manager or SES staffer. Each party shall strike a name from the respective employee/union representative, supervisor, and manager/SES lists until one name remains on each list. The remaining names on each of the three lists shall serve as the panel members. The HR policy office of the Department shall determine how the lists are developed, after consideration of employee/union suggestions. The HR policy office also shall determine administration/operations issues of the panel, as well as other job duties of panel members.</p>

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D		Discipline/Adverse Action System
System elements:		Summary description:
		When deciding proposed adverse actions based on medically-related reasons, the panel shall consult with the appropriate Departmental or directorate medical officer, reasonable accommodation officer; or with appropriate external expertise.
3	Evaluation	<ul style="list-style-type: none"> • The panel shall report monthly to the HR policy office on the number and types of adverse actions for which they received a written and or oral reply, the corresponding decisions to sustain, mitigate, or reverse the proposed action, and any written complaints received. • The HR policy office shall monitor panel decisions for fairness. • The HR policy office shall submit quarterly activity reports to OPM.

A		Appeals System
System elements:		Summary description:
1	Coverage - Employees - Actions - Probationary/ trial period	<p><u>Employees Covered.</u> Permanent employees including bargaining unit employees, administrative law judges.</p> <p><u>Actions Covered.</u> Removals or demotions.</p> <p><u>Specific employees excluded.</u> Employees excluded from adverse action procedures, employees and positions excluded from MSPB appeal rights prior to the DHS transfer (e.g., law enforcement officers, intelligence, investigations, national security functions, TSA employees), and employees in similar positions as those that were excluded from MSPB appeal rights prior to the DHS transfer.</p> <p><u>Specific actions excluded.</u> Suspensions, demotions, adverse actions based on denial or revocation of a security clearance; denial of a promotion, within-grade, within-band, or general increase; any immediate, temporary action such as an indefinite suspension; appeals based on discrimination; and removals for national security breaches which are appealable only to the U.S. Federal District Court.</p> <p>Discrimination appeals must be submitted to the Equal Employment Opportunity Commission (EEOC) after receipt of the directorate's final agency decision, and not to the external adjudicator. Ideally, EEO appeals should be handled by the external adjudicator to minimize the "multiple forum problem," but EEOC authority is not waivable under current DHS statute.</p>
2	Reviewer - Composition - Authority	<p><u>Composition.</u> An arbitrator, MSPB Administrative Judge, or MSPB Board Member may serve as the external adjudicator.</p> <p>When an arbitrator serves as the external adjudicator, the parties shall jointly select the arbitrator and share the payment of arbiter fees, unless some other agreement has been reached among the parties and the adjudicator. As applicable, the arbitrator shall determine each party's portion of the fees to pay. The arbitrator shall forward any appeals to the MSPB that are under MSPB's jurisdiction.</p>

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A Appeals System	
System elements:	Summary description:
	<p><u>Authority.</u> The external adjudicator has the authority to mitigate, sustain, or reverse the decision of the internal panel, award back pay and attorney fees, enforce its decision, impose sanctions, and render default decisions.</p> <p>MSPB retains adjudicatory authority over actions covered by other statutes, such as reduction-in-force (RIF), furlough for longer than 30 days, suitability determinations, veteran's preference violations, Uniformed Services Employment and Reemployment Rights Act (USERRA) violations, Veteran's Employment Opportunities Act (VEOA) violations, and Individual Right of Action (IRA). With the exception of an IRA, an employee appealing these actions shall submit the appeal directly to the MSPB, not to the internal panel or arbitrator. Ideally, whistleblower appeals should be handled by the external adjudicator to minimize the "multiple forum problem," but OSC authority is not waivable under current DHS statute.</p>
<p>3 Review Process</p> <ul style="list-style-type: none"> - Components - Timeframe 	<p><u>Appeal Filing.</u> Within 10 workdays after the directorate's decision, an appellant must file his appeal to the external adjudicator and provide a copy to the directorate. This deadline must be met regardless of settlement efforts.</p> <p>An appellant has the right to choose the method of adjudication (arbitrator, MSPB AJ, or MSPB Board Member). The adjudicator shall be jointly selected by the appellant/representative, and the agency/management representative; and the parties must select an adjudicator who is readily available for work so as to not delay the appeal process.</p> <p>Appeals filed after the deadline must include explanation and evidence for the late filing that the external adjudicator accepts. Any appealed filed late and rejected by the external adjudicator is subject to default decision.</p> <p>The content of an appeal shall identify the employee by name, title, and position, include the information necessary to meet the employee's burden of proof (e.g., the reasons for the appeal, and the desired remedy), and the appellant's discovery request.</p> <p><u>Settlement discussion.</u> The external adjudicator may conduct settlement discussions at any time prior to issuing his or her decision, and may retain enforcement authority over the agreement at the election of the parties. Under very limited circumstances shall settlement discussions delay appeal adjudication for longer than 5 workdays.</p> <p><u>Hearing.</u> The external adjudicator shall hold a non-judicial hearing at his or her discretion (e.g., when a material issue of fact is in dispute).</p> <p>When a hearing is held, a bench decision shall be provided within 20 workdays after receipt of the appeal.</p>

A Appeals System	
System elements:	Summary description:
	<p><u>Summary judgment.</u> When a hearing is not held, summary judgment shall be provided within 20 workdays after receipt of the appeal.</p> <p><u>Delays.</u> Any stays, case suspensions, or postponements in the appeals process shall be prohibited, unless provided by statute (e.g., Special Counsel request).</p> <p><u>Discovery.</u> Each party shall be allowed one discovery request opportunity. The appellant shall provide his discovery request to the directorate, with copy to the external adjudicator at the time the appeal is filed.</p> <p>Within 5 workdays after receiving the appeal, the directorate shall answer the appellant's discovery request and issue discovery request to the appellant, with copy to the external adjudicator. The external adjudicator shall provide discovery requests to the appellant and the directorate.</p> <p>Within 5 workdays after receiving discovery requests from the directorate and the external adjudicator, the appellant shall answer, with copies to the directorate and the external adjudicator. The directorate shall answer the discovery request of the external adjudicator, with copy to the appellant.</p> <p>Appellant and agency requests for discovery are subject to the external adjudicator's approval.</p> <p><u>Representation.</u> Parties may be represented by an individual of their choice, subject to disqualification by the external adjudicator. Non-party witnesses have no right to representation.</p> <p><u>Miscellaneous.</u> Other judiciary-type proceedings are excluded, such as interlocutory appeal, interveners, amicus curiae, substitute party, and motions.</p>
4	<p>Decision</p> <ul style="list-style-type: none"> - Precedential - Burden of proof - Standard of proof - Judicial review <p><u>Precedent.</u> The decision of the external adjudicator shall not be precedential, and shall not apply legal standards, legal rules, or cite administrative "case law."</p> <p><u>Burden and standard of proof.</u> The directorate has the burden of proving efficiency of the service and appropriate progressive action by sufficient evidence. If the directorate meets its burden of proof, the external adjudicator must decide in favor of the directorate, unless the appellant proves by sufficient evidence that the directorate is wrong in taking the action, committed a prohibited personnel practice, violated a law, or some other exonerating reason.</p> <p>Sufficient evidence is evidence the external adjudicator finds to be adequate.</p> <p>The external adjudicator shall inform the appellant of the decision with copy to the directorate and the Office of Personnel Management, stating whether the directorate met its burden of proof, and inform the appellant of the time limits and procedures for appealing to the U.S. Court of Appeals for the Federal Circuit.</p>

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A		Appeals System
System elements:		Summary description:
		<p><u>Judicial Review.</u> The external adjudicator's decision may be reviewed by the U.S. Court of Appeals for the Federal Circuit. The court shall review the record and hold unlawful and set aside any directorate action, findings, or conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; obtained without procedures required by law, rule, or regulation having been followed; or unsupported by substantial evidence.</p> <p>The Office of Personnel Management, on behalf of the Department, may request judicial review after receipt of the external adjudicator's decision.</p>
5	<p>Other Appeals Systems</p> <ul style="list-style-type: none"> - Discrimination - Prohibited personnel practices 	<p>Any appeal with a discrimination claim must be submitted to the Equal Employment Opportunity Commission for adjudication. If an external adjudicator receives such an appeal, she or he must promptly forward the appeal to the EEOC and so notify the appellant and the directorate.</p>
6	<p>Evaluation</p>	<p>The external adjudicator shall provide a copy of all decisions to the Office of Personnel Management, and a quarterly report of any written complaints received.</p>