

§ 16.14

consequence of the matter by which the employee is aggrieved;

(6) To order that an employee be provided with facilities relating to the physical working environment which the employee has been denied arbitrarily, capriciously or in violation of applicable regulation.

(c) Such orders of the Board shall be final, subject to judicial review as provided for in section 694 of the Act, except that reinstatement of former officers who have filed grievances under §16.1(c)(7) shall be presented as Board recommendations, the decision on which shall be subject to the sole discretion of the agency head or designee, who shall take into account the needs of the Service in deciding on such recommendations, and shall not be subjected to judicial review under section 694 of the Act. The reason(s) for the agency head's (or designee's) decision will be conveyed in writing to the Board and the grievant.

(d) If the Board finds that the grievance is meritorious and that remedial action should be taken that directly relates to promotion or assignment of the grievant, or to other remedial action, including additional step increases, not provided for in paragraph (b) of this section, or if the Board finds that the evidence before it warrants disciplinary action against any officer or employee, it shall make an appropriate recommendation to the head of the agency, and forward to the head of the agency the record of the Board's proceedings, including the transcript of the hearing, if any. The head of the agency (or designee, who shall not have direct responsibility for administrative management) shall make a written decision to the parties and to the Board on the Board's recommendation within 30 days from receipt of the recommendation. A recommendation of the Board may be rejected in part or in whole if the action recommended would be contrary to law, would adversely affect the foreign policy or security of the United States, or would substantially impair the efficiency of the Service. If the decision rejects the Board's recommendation in part or in whole, the decision shall state specifically any and all reasons for such action. Pending the decision, there shall

22 CFR Ch. I (4-1-01 Edition)

be no ex parte communications concerning the grievance between the agency head, or designee, and any person involved in the grievance proceeding.

§ 16.14 Reconsideration of a grievance.

A grievant whose grievance is found not to be meritorious by the Board may obtain reconsideration by the Board only upon presenting newly discovered or previously unavailable material evidence not previously considered by the Board and then only upon approval of the Board.

§ 16.15 Judicial review.

Any aggrieved party may obtain judicial review of these regulations, and revisions thereto, and final actions of the agency head (or designee) or the Grievance Board hereunder, in the District Courts of the United States, in accordance with the standards set forth in chapter 7 of title 5 of the United States Code. Section 706 of title 5 shall apply without limitation or exception.

PART 17—OVERPAYMENTS TO ANNUITANTS UNDER THE FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

Sec.

- 17.1 Definitions.
- 17.2 General provisions.
- 17.3 Notice to annuitants.
- 17.4 Initial determination.
- 17.5 Standards.
- 17.6 Notice of decision and right of appeal.
- 17.7 Appeal.

AUTHORITY: 22 U.S.C. 842; 22 U.S.C. 1061; 22 U.S.C. 2658; and E.O. 10897 (25 FR 12439).

SOURCE: 44 FR 47928, Aug. 16, 1979, unless otherwise noted.

§ 17.1 Definitions.

(a) *Act* means the Foreign Service Act of 1946, as amended.

(b) *Annuitant* has the meaning set forth in section 804(1) of the Act (22 U.S.C. 1064(1)).

(c) *Foreign Service Grievance Board* means the Board established by 22 CFR 16.10 under sections 691 and 692 of the Act (22 U.S.C. 1037-1037c).

(d) *Overpayments* has the same meaning as in §822(d) of the Act (22 U.S.C. 1076a(d)).

Department of State

§ 17.5

(e) *Secretary* means the Secretary of State.

§ 17.2 General provisions.

Section 822(d) of the Act (22 U.S.C. 1076(d)) provides recovery of overpayments by the Department of State of benefits to annuitants may not be made when, in the judgment of the Secretary, the individual recipient is without fault and recovery would be against equity and good conscience or administratively infeasible. This part establishes procedures for notification to annuitants of their rights, for administrative determination of those rights and for appeals of negative determinations. This part also establishes procedures by which an annuitant can contest a determination that the annuitant has been overpaid.

§ 17.3 Notice to annuitants.

The Office of Finance, Department of State, shall give written notification to any person who has received an overpayment, the cause of the overpayment, the intention of the Department to seek repayment of the overpayment, and the basis for that action, the right of the annuitant to contest the alleged overpayment or to request a waiver of recovery, and the procedure to follow in case of such contest or appeal. The notification shall allow at least 30 days from its date within which the annuitant may file a written response, which may include evidence, argument, or both.

§ 17.4 Initial determination.

(a) The Director of the Office of Finance will be responsible for preparing an administrative file as a basis for determination in each case where an annuitant contests a claim to recover overpayment or requests waiver of recovery. This file shall include: all correspondence with the annuitant; documentation on the computation of the annuity or annuities in question; and any information available to the Department which bears on the application of the standards of waiver of recovery to the particular case.

(b) On the basis of the administrative file, the Director, after consultation with and review of the preliminary findings by the Office of the Legal Ad-

viser and Office of Employee Relations, Bureau of Personnel, shall prepare a preliminary finding. This preliminary finding shall contain a positive or negative determination on all material issues raised by the contest or request for waiver. In the latter case, there shall be a determination of the applicability or non-applicability of each of the standards set forth in § 17.5.

(c) The Director shall make the final administrative determination.

(d) At any time before the final administrative decision, the Director may request the annuitant to supplement his or her submission with additional factual information and may request that the annuitant authorize the Department of State to have access to bank and other financial records bearing on the application of these regulations.

§ 17.5 Standards.

(a) *General.* (1) Waiver of overpayment will not be allowed in any case prior to receipt and evaluation of a statement of financial responsibility, duly sworn by the recipient of the overpayment, except in those cases where the facts make it obvious that the individual has no capacity to repay. Such statement will be waived in the latter case.

(2) Waiver of overpayment will not be allowed when overpayment has been made to an estate.

(b) *Fault.* (1) Determinations of "fault" or the absence thereof, will be made according to the commonly understood and standard concepts of equity applicable thereto.

(2) A prerequisite to waiver of overpayment shall be clear and convincing showing that the person from whom recovery would otherwise be made did not cause, or was not otherwise responsible for the overpayment, i.e., he or she performed no act of commission or omission that resulted in the overpayment. Pertinent consideration to be made in this area are:

(i) Whether payment resulted from the individual's incorrect (not necessarily fraudulent) statement.

(ii) Whether he or she knew the payment was erroneous and, if so, whether his or her subsequent failure to act resulted from desire or ignorance.