



GUIDELINES FOR DISCIPLINARY APPEALS TO THE CITY SERVICE COMMISSION



(Approved by the Board of City Service Commissioner – October 21, 2014)
(Amended: July 28, 2015) (r. 05.05.16)

PURPOSE: These guidelines provide information to appellants, departmental personnel, and employee representatives relative to the City Service Commission’s disciplinary appeal process. These guidelines are subordinate to the statutory duties and obligations of the City Service Commission (the Commission) as set forth in secs. 63.18-63.53 of the Wisconsin Statutes and Rule XIV of the City Service Commission.

APPLICATION OF GUIDELINES: A regularly-appointed City of Milwaukee employee who has passed probation may appeal an employment decision that results in discharge, reduction, an unpaid suspension of more than 15 days, or a second unpaid suspension within 6 months of a prior unpaid suspension, regardless of the length of time of either suspension. These guidelines apply to appeals before the City Service Commission for these disciplinary actions; these guidelines do not apply to disciplinary appeals required to be heard by other boards or commissions. Source: §§ 63.43 and 63.44 Wis. Stat.

Employees of the Fire and Police Departments are not subject to the appeal procedure set forth in § 63.43 of the Wisconsin Statutes; their appeal rights are set forth in Rule XVI of the Rules of the Fire & Police Commission. Source: §§ 62.50 and 63.27 Wis. Stat.

APPEAL PROCEDURES

HOW TO APPEAL: In order to appeal, an employee must file a written notice with the Commission within 3 business days of the receipt of written notification of the disciplinary action. Employees must use the appeal form prescribed by the Department of Employee Relations.

TIME LIMIT FOR FILING AN APPEAL: The time limit to file an appeal ends at 4:45 p.m. on the third business day following receipt of written notification of the disciplinary action. An appeal is filed when it is received and time-stamped by the Department of Employee Relations on behalf of the Commission. The Department of Employee Relations is located at City Hall, 200 East Wells Street, Rm. 706, Milwaukee, WI 53202. An appeal may also be filed by electronic transmission to the following email address: klbiern@milwaukee.gov or by FAX to the following number: (414) 286-0203. The appeal must be received during regular business hours, which are 8:00 a.m. to 4:45 p.m. An appeal (including email or fax transmissions) received after 4:45 p.m. on a business day or received at any time on a non-business day shall be considered filed on the next business day.

FAILURE TO FILE A TIMELY APPEAL: Failure on the part of an employee to file a timely appeal within 3 business days shall result in the appeal not being considered. The employee will be notified in writing if the appeal is not timely.

REPRESENTATION AT THE APPEAL HEARING: An employee who appeals a disciplinary action (the appellant) may represent him or herself, may be represented by an employee representative or by an attorney. When the appellant is permitted to be represented by an attorney, the department may be represented by an attorney from the City Attorney's Office. Source: §§ 63.43 Wis. Stat.

PRE-HEARING PROCEDURES

PRE-HEARING CONFERENCE: Both parties must attend a pre-hearing conference that will be scheduled and conducted by the Director of the Department of Employee Relations (Director) or the Director's designee. The purpose of the pre-hearing conference is to: (1) clarify and narrow the issues to be addressed at the appeal hearing; (2) identify witnesses and exhibits that each party intends to present at the appeal hearing; and (3) resolve any procedural matters prior to the appeal hearing.

A Summary of Stipulated Facts shall be prepared by the Director prior to the pre-hearing conference. This Summary shall include the appellant's employment history data, the date of the disciplinary action, a statement verifying that the appropriate notices have been served, and a statement indicating that a timely appeal was filed. This Summary shall be presented to the parties at the pre-hearing conference. The parties will be asked to review the information and identify any corrections needed. At the pre-hearing conference, the parties must identify and share exhibits that they intend to use at the appeal hearing. The Director will determine whether or not the parties can stipulate to evidentiary matters, such as the submission of exhibits and the calling of witnesses. The Director will advise the parties as to the relevance and suitability of the documents and/or testimony that each party intends to submit or elicit at the appeal hearing. Each party shall bring three copies of each available exhibit the party intends to submit into evidence and shall also identify all witnesses that the party intends to call at the appeal hearing.

The Director will draft a **Summary of Stipulated Exhibits and Witness List** that shall include the stipulated matters that have been approved by the Director; this document shall be made a part of the appeal record. The Director shall provide unmarked copies of any proposed exhibit not stipulated to by both parties at the pre-hearing conference and any proposed exhibit that the Director permits to be sent to the DER and the opposing party after the pre-hearing conference, but prior to the mailing of the agenda and related matters to the Commission. The admissibility of exhibits not stipulated to by the parties will be decided by the Commission at the hearing. The failure of a party to identify a witness or furnish copies of proposed available exhibits at the pre-hearing conference may result in

either the Commission excluding the evidence or, an adjournment of the hearing so that the opposing party and the Commission can review this new evidence.

SUBPOENAS: At the request of the appellant or of the department, the Commission may, but is not required to, issue a subpoena to compel a witness to appear at the hearing to testify and/or bring specific documents to the appeal hearing. If the Commission decides to issue a subpoena that has been requested, the requesting party is responsible for proper service of the subpoena. Requests for the issuance of a subpoena must be made to the Director at the time of the pre-hearing conference. The Director shall decide at the pre-hearing conference whether to process a party's request for a subpoena.

NOTICE OF APPEAL HEARING: Written notice of the time, date and place of the appeal hearing shall be given to the appellant, the appellant's representative and the department.

SETTLEMENTS AND WITHDRAWALS: An appeal may be settled by the parties or withdrawn by the appellant at any time prior to the commencement of the appeal hearing. Upon settlement of the appeal, the appellant shall either file a written withdrawal of his or her appeal or state on the record at the time of the scheduled appeal hearing that the appeal is withdrawn.

ADJOURNMENT REQUESTS: The Director has the authority to grant each party one adjournment prior to the scheduled appeal hearing date, based upon the Director's determination that cause exists. A request for an adjournment must be made in writing and shall state the reasons for the adjournment. Notwithstanding the above, the Commission may adjourn the appeal hearing at any time upon terms it deems just. Rescheduling of the appeal hearing will be done as soon as administratively feasible.

APPEAL HEARING PROCEDURES

ISSUES TO BE DETERMINED AT THE APPEAL HEARING: Disciplinary appeal hearings are quasi-judicial proceedings intended to determine the facts in as direct and simple a manner as possible. Generally, the issues to be determined by the Commission in a disciplinary appeal hearing are whether there was cause for the department to impose the disciplinary action and whether the degree of disciplinary action imposed was reasonable under the circumstances. If the Commission finds there was cause for imposition of discipline, it has the authority to sustain or modify the level of disciplinary action imposed by the department.

The appeal hearing shall provide the appellant a reasonable opportunity to present pertinent evidence and testimony to demonstrate: (1) that the employee did not commit the acts or the performance issues did not occur as alleged; (2) that, even if the employee committed the acts or the performance issues occurred as alleged,

such activity does not constitute misconduct; (3) that even if the employee committed misconduct, the degree of discipline imposed is too harsh or severe; (4) that the employee did not have a reasonable basis to know that the conduct would result in discipline; or (5) a combination of any of these matters which would justify or compel modification of the department's action.

BURDEN OF PROOF: The burden of proof is on the department to establish by a preponderance of the evidence that there was cause for the action taken. A preponderance of the evidence means that, to a reasonable certainty, the action of the department is supported by the greater weight of credible evidence.

PRESENTATION OF EVIDENCE:

Order of Presentation: The presentations by both parties shall be as brief and closely-related to the issue(s) as possible. While the Commission directs the proceedings, the following order of presentation is generally followed: (1) each party will be given an opportunity to make a brief opening statement outlining what that party believes its evidence will show; (2) the department presents its evidence first; (3) the appellant then presents his or her evidence; (4) the department may be allowed to submit rebuttal evidence after the appellant presents his or her case; and (5) after the Commission has heard all the testimony, each party will be given the opportunity to make a brief closing statement summarizing its position.

Rules of Evidence: The scope of evidence that will be considered by the Commission is limited to evidence that is relevant to the issues set forth in the disciplinary notice. Although not bound by the Wisconsin Rules of Evidence, the Commission must base its decision on evidence that is reliable. Therefore, the parties should limit their reliance on hearsay evidence, since that evidence may be deemed unreliable by the Commission. Similarly, a party who submits an investigative or summary report should call the person who drafted the report to testify as to the contents of the report. The Commission determines the relevance and credibility of the evidence and the weight that will be given to a particular piece of documentary evidence or to the testimony of a witness.

Witnesses and Testimony: Witnesses are sworn and their testimony is taken under oath. Witnesses' testimony should be limited to facts or other information about which they have direct knowledge. Witnesses are subject to reasonable and relevant cross-examination by the opposing party. Questioning of the witness should be as concise as possible and the questions shall not include argument or commentary.

Throughout the appeal hearing, Commissioners will be given an opportunity to ask their own questions to aid the Commission in its consideration of the evidence. The President of the Commission shall exercise reasonable control

over the questioning of witnesses so as to: (1) effectively ascertain the truth; (2) ensure that the testimony is relevant and probative; and (3) protect the witness from harassment or undue embarrassment.

FAILURE TO APPEAR AT THE APPEAL HEARING: If the appellant does not appear at the appeal hearing, the Commission may dismiss the appeal with prejudice. This action would preclude an appellant from bringing the appeal back to the Commission.

FINDINGS/DECISION

FINDINGS/DECISION COMMISSION ACTION: Following the closing statements and at the conclusion of the hearing, the Commission may adjourn into closed session for deliberation. Thereafter, the Commission shall reconvene in open session and shall, by majority vote, decide whether there was cause for the department to impose disciplinary action and whether the level of disciplinary action imposed by the department will be sustained. The Commission may vote to modify the level of disciplinary action.

DRAFTING OF DECISION/ENFORCEMENT: The Commission may direct the prevailing party to draft the final decision in the format prescribed by the Commission and subject to its review. The written decision shall be presented for adoption at the Commission's next regularly scheduled meeting. The department must abide by the Commission's decision as soon as administratively feasible and without delay. The Director shall ensure that the Commission's decision is properly implemented.