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What is an appeal?

An appeal asks the State Civil Service Commission (Commission) to review a personnel action. An appeal may challenge the merits of a personnel action, or allege discriminatory action in violation of Act 71 of 2018.

Civil service employees who are covered by a collective bargaining agreement and want to challenge a contract interpretation should contact their respective union or human resources office regarding the filing of grievances. The Commission cannot interpret the terms of a collective bargaining agreement.

The possible remedies for a successful appeal may include reinstatement, recovering lost wages and benefits, modifying discipline, repeating the hiring process, removal of discipline, or removal of performance review. This list is not all-inclusive and you may suggest another remedy. Ultimately, the Commission determines the appropriate resolution.

Who can file an appeal?

Any regular or probationary employee in the classified service, or job applicant, may appeal an employment action. A non-civil service employee may only appeal a non-selection for appointment to a position in the classified service. A person who files an appeal is referred to as an appellant.

Any person adversely affected by an alleged discriminatory action may appeal that action. The discrimination claimed must relate to the unequal treatment based on one or more of the following: political affiliation, religious opinions/affiliations, labor union affiliation, race, national origin, sex, age, disability, retaliation, disparate treatment, violation of Act 71 of 2018 or any other non-merit factor not related to job performance.

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What actions are appealable to the Commission?

- Appointment
- Promotion
- List removal
- Eligibility
- Reinstatement
- Transfer
- Removal
- Suspension
- Leave of Absence
- Reclassification
- Forced Resignation
- Furlough
- Demotion
- Employee Performance Review
- Compensation changes (except salary increments, general pay)

Oral/written reprimands and Interim Employee Performance Reviews are not appealable actions.

Is there a time limit to file an appeal?

Appeals must be received or postmarked within **twenty (20) calendar days** of the date the employee receives notice of the personnel action or becomes aware that discrimination has occurred. 4 Pa. Code § 105.12(a)(3).

Appeals filed or postmarked after the 20th day cannot be heard by the Commission and must be dismissed.

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What are the two types of appeals?

An appeal that challenges a forced resignation, demotion, furlough, suspension, or removal of a regular status employee is decided under **Section 3003(7)(i)** of Act 71 of 2018.

An appeal filed by a probationary status employee is decided under **Section 3003(7)(ii)** of Act 71 of 2018. This is the only type of appeal that can be filed by a probationary status employee. Also, all appeals related to non-selection for appointment and non-selection for promotion and employee performance reviews, as well as appeals alleging discrimination, are decided under **Section 3003(7)(ii)**.

A regular status employee can simultaneously request an appeal under **Section 3003(7)(i)** and **Section 3003(7)(ii)**.

How must appeals be filed?

An appeal must be in writing. The State Civil Service Commission Appeal Request Form can be found on the Commission's website, www.scsc.pa.gov, or obtained from the Commission's Legal Services Office.

This form will ask appellant for specific details about the action being appealed. It must be signed by the appellant and filled out carefully and completely, or the appeal may be delayed or denied by the Commission. The appellant should state the remedy being sought on the form. It is critical to attach a copy of any written correspondence related to the appealed action.

An appellant may withdraw an appeal at any time by filing a written request. The written request can be sent by email or USPS mail. (Addresses on back cover.)

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What happens when an appeal is received?

All appeals received by the State Civil Service Commission are initially reviewed for completeness. If the appeal received is incomplete, the Commission may request additional information. This may delay the appeals process or cause the appeal to be dismissed.

The Commission reviews the properly completed appeal at a scheduled monthly Commission meeting, to determine whether the appeal was filed within the time limits and whether the action is one which can be appealed under Act 71 of 2018.

If a hearing is granted, the appellant, who is the person submitting the appeal, and the appointing authority, who is the agency that made the decision being appealed, will be notified of the date, time and location of the hearing. Hearings are primarily held at the Commission's Harrisburg, Philadelphia or Pittsburgh offices. Granted hearings are scheduled as soon as possible.

What if my appeal is denied?

If the appeal request is denied, the appellant will be notified, and has fifteen (15) calendar days from the mailed date to request the Commission reconsider its Order. If an appellant submits a request for reconsideration, the appellant must furnish **additional** information to support the request.

The Commission's denial of an appeal or its denial of a reconsideration may also be appealed to the Commonwealth Court within thirty (30) calendar days of the mailed date of the Order. Both options have strict timeline limitations. Asking for reconsideration does not extend the time for filing a Commonwealth Court appeal.

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Must an appellant be represented by an attorney?

Appellants are NOT required to hire an attorney. It may be advantageous to have an attorney, but it certainly is not required. Appellants may represent themselves, but cannot be represented by non-legal advisors. The appointing authority will be represented by an attorney.

If an appellant chooses to retain their own attorney, the appellant is responsible for securing an attorney that is licensed in Pennsylvania. Many county bar associations have a Lawyer Referral Service who can assist in selecting an attorney. The appellant is entirely responsible for negotiating and paying the attorney's fee. The Commission has no authority to award payment of attorney's fees.

Before a hearing, the appellant should carefully review the excerpts of the Rules of the Civil Service Commission. These documents are enclosed with the initial hearing notice and are available on the website, www.scsc.pa.gov.

If a hearing is granted and the appellant intends to represent themselves, please see information about *pro se* appellants on page 4.

What happens at a hearing?

A Commissioner(s) or a hearing officer will preside at the hearing. The presiding officer will begin by explaining the purpose of the hearing. The presiding officer will then submit exhibits on behalf of the Commission (i.e. letter regarding personnel action, the Appeal Request Form, proofs of service, and Notice of Public Hearing, and stipulations if any).

The party with the burden of proof presents its case first, followed by the other party. The burden of proof rests with the party depending on the hearing type: **Section 3003(7)(i)** is the appointing authority's burden; **Section 3003(7)(ii)** is the appellant's burden.

In presenting its case first, the party with the burden of proof may call witnesses, who are sworn by the presiding officer, and the opposing party may cross-examine the witnesses. After the first party presents its case the opposing party may call witnesses for direct questioning who may then be cross-examined.

An indispensable party may appear and participate as a third party throughout the proceeding. Not all appeals include an indispensable party (see page 7).

Any party may submit relevant documents as evidence. Be sure to have enough copies of all documents for distribution during the hearing. The parties must present all documents at the hearing as exhibits to be entered into the record. To be considered an exhibit, any document attached to the Appeal Request Form must be entered separately as an exhibit at the hearing.

Any party may object to exhibits or testimony. The presiding officer will decide to grant (sustain) or deny (overrule) the objection. If there is no objection, the exhibits and testimony become part of the record.

If any party fails to appear for the hearing, the Commission may rule in favor of the party that is present.

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If I represent myself, how do I prepare for the hearing?

If not represented by an attorney you are considered a *pro-se* (pro-say) appellant, which means you will represent yourself. When the hearing is scheduled, you will receive resources from the Commission. These resources include: a scheduling letter confirming the date, time and location of your hearing; excerpts of the Rules applicable to the hearing; this brochure; and a praecipe for appearance in case you later decide to get an attorney to represent you. It is important to familiarize yourself with these documents.

As a *pro-se* appellant you will want to gather any documents and names of witnesses you intend to call on your behalf. Please keep in mind you will have to prove the claims you make on your Appeal Request Form.

The hearing follows a procedure similar to, but not quite as formal as, a regular courtroom proceeding. The hearings are public. Witnesses are sworn in and can be cross-examined by the opposing party, and evidence is introduced. A court reporter is present and prepares a transcript of the proceedings. One or more Commissioner(s) or a hearing officer presides at the hearing. All Commissioners review the transcript and documents submitted on the record as they consider their decision on the appeal.

Prior to the hearing you will want to organize your position: be prepared to ask the appointing authority witnesses questions; be prepared to ask your

witnesses questions that support your position; be prepared to object to questions or exhibits presented by the appointing authority that you believe are not related to your appeal; and be prepared to advocate for yourself.

If an appellant requires assistance because of a disability with hearing, speech and/or vision or needs an interpreter for a language other than English, contact the Legal Services Office at least two weeks prior to your scheduled hearing date (see page 5).

If the scheduled hearing date conflicts with your availability, you may request the Commission continue the hearing to a later date. Contact the appointing authority and any indispensable parties for their input, then submit your request for continuance, in writing with sufficient explanation, to the Legal Services Office. Be sure to send a copy of the request to all parties. The decision to grant or deny a continuance request is made by the Commission.

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Each party shall attempt to determine the witnesses they intend to call at the hearing and the names shall be received by the Commission and the other parties, no later than three (3) work days in advance of the hearing. 4 Pa. Code § 105.14b(b)(c).

If you have any questions as you prepare for your hearing, contact the Legal Services Office. While the staff cannot provide legal advice, they can answer procedural questions and explain the process.

If you have any questions at the hearing itself, feel free to ask the presiding Commissioner or hearing officer. They will carefully respond and ensure you understand the proceeding.

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Prior to the hearing, you will want to organize your position:

1. *Gather any documents and names of witnesses you intend to call;*
2. *Be prepared to ask the appointing authority witnesses questions;*
3. *Be prepared to ask your witnesses questions;*
4. *Be prepared to object to questions or documents from the appointing authority that you believe are not related to your appeal; and*
5. *Be prepared to advocate for yourself.*

What accommodations are available to appellants?

If an appellant or other party requires assistance because of a disability with hearing, speech and/or vision or needs an interpreter for a language other than English, contact the Legal Services Office at least two weeks prior to the scheduled hearing date. The Commission is responsible to provide an appropriate device or qualified interpreter whose credentials are certified for quasijudicial proceedings. Also, the Commission covers the costs required to provide this assistance.

Legal Services Office:	717-783-2924	Fax:	717-772-5120
TRS:	711	Email:	RA-cs-legalsvcsQandA@pa.gov

How do I get subpoenas?

See also Civil Service Rules related to subpoenas on page 6

WITNESSES

A party may request the Commission issue a subpoena to compel a witness to appear at the hearing to testify. The witness may need a subpoena to present to their employer for leave to attend the hearing.

A subpoena is a written "Order" from the Commission directing a witness to attend the hearing at the scheduled date, time and location.

To obtain a subpoena, a party must submit a written request to the Commission listing the witnesses **and explaining why** each one is important and necessary to prove the case. Also **send a copy** of the request **to the opposing party**.

If the Commission approves the subpoena request, the subpoena will be prepared and mailed to you. The Commission does not serve the subpoena on the witness. It will be the **requesting party's responsibility** to see that the witness is personally served with the subpoena at least forty-eight (48) hours prior to the hearing.

Personal service means handing the subpoena directly to the witness. Personal service does not mean mailed to a witness, put in an office mailbox or in-box, or given to a coworker to give to the witness. A witness may agree to receive the subpoena by other than personal service, but without the witness's agreement such methods are not acceptable.

Please refer to Section 105.14(a)(c) on page 6 to review witness fee requirements. Any applicable fees are due before the hearing unless the requesting party and the witness have agreed to a different arrangement.

DOCUMENTS

If a party believes the opposing party has documents in its possession that may support testimony of witnesses, a party may request the Commission issue a subpoena to compel the custodian of the documents to provide those documents. Such documents might include letters, emails, job

descriptions, employee performance reviews, or doctor notes.

To obtain a subpoena for a document, submit a **written** request to the Commission for a subpoena *duces tecum*. Also **send a copy** of your request **to the opposing party**.

In the request be sure to describe the requested document as precisely as you can; explain why the document is necessary to support the case; explain who has the document; and specify when the document was created.

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TO ALL PARTIES:

When a party communicates with the Commission regarding a filed appeal, that party must also copy all other parties by the same method. For example, if one party sends an email to the Commission, that party must email all other parties. The Commission is not responsible to copy the parties on your behalf.

Questions should be directed to the Legal Services Office.

Commission's Rule Concerning Subpoenas

4 Pa. Code § 105.14(a). Subpoenas.

(a) *Procedure for requesting* subpoenas.

- (1) Subpoenas for the attendance of witnesses or for the production of documents will be issued only upon written application to the Chairperson of the Commission or the Commissioner presiding at the hearing, with a copy to the opposing party.
- (2) Written application shall specify as clearly as possible the relevance of the testimony or documentary evidence sought. As to documentary evidence, the request must specify to the extent possible the documents desired and the facts to be proved thereby.
- (3) Failure to adhere to the requirements of this subsection may result in the refusal by the Commission to issue the requested subpoenas.
- (4) Subpoenas for new or additional witnesses will not be issued after a hearing has been commenced and continued unless orally requested on the record at the hearing and approved by the Commission, except that subpoenas issued prior to the commencement and continuance of the hearing may be reissued upon written request.

(b) Service.

- (1) A subpoena shall be served personally upon the witness.
- (2) Subpoenas for the production of documents shall be served personally or by first-class mail upon the individual in possession of the documents, if known, or the agency head, who may designate a knowledgeable alternate as custodian of the documents, or the legal counsel for the appointing authority.
- (3) Service of subpoenas for the attendance of witnesses shall be made at least 48 hours prior to the hearing, unless the witness agrees to waive the 48-hour

requirement. Subpoenas for the production of documents shall be served no later than 5 work days prior to the hearing.

- (4) Failure to adhere to the requirements of this subsection may result in a ruling by the Commission denying the enforceability of the subpoena.

(c) Compensation of witnesses.

- (1) Witnesses subpoenaed to appear before the Commission shall be paid a witness fee at the rate specified for the courts of common pleas by the party requesting the subpoena.
- (2) Witnesses subpoenaed to appear before the Commission shall be paid, by the party serving the subpoena, mileage at the rate specified for the courts of common pleas for each mile actually and necessarily traveled between the place named in the subpoena and either the place of residence for the witness or the worksite, whichever distance is less.
- (3) At the time a witness is served with a subpoena, the witness shall, upon demand, be paid the witness fee and travel expenses provided in this subsection by the party serving the subpoena. If no demand is made by the witness at the time of service, the fee shall be tendered to the witness prior to the start of the hearing.
- (4) Paragraphs (1)-(3) supersede 1 Pa. Code § 5.139 (relating to subpoenas).

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Exhibits should be marked as follows. The number should be in sequence with how the documents will be entered into the record.

- Commission - A, B, C, etc.
- Appointing Authority - AA-1, AA-2, AA-3, etc.
- Appellant - AP-1, AP-2, AP-3, etc.
- Indispensable Party - IP-1, IP-2, IP-3, etc.

Who are the key participants at the hearing?

The hearing is presided over by a **Commissioner(s)** or **hearing officer**. This person sits at the bench, swears-in witnesses, makes rulings on objections, and ensures a fair proceeding for all parties.

The **appointing authority (AA)** is the agency that made the decision being appealed. The appointing authority is represented by an attorney. This attorney will coordinate the case on behalf of the appointing authority including questioning witnesses and presenting evidence.

The **appellant (AP)** is the person who filed the appeal. This person may question witnesses and present evidence, if they choose not to be represented by an attorney.

The **indispensable party (IP)** is the party currently assigned to a position whose appointment is being challenged in an appeal. They may have their own attorney who can participate in the hearing. Not all appeals will have an indispensable party.

The **court reporter** sits near the bench and records all that is said at the hearing for the purpose of creating a transcript, or official record.

The testifying **witness** sits near the presiding Commissioner or hearing officer. All witnesses are sworn-in before testifying. The party calling a witness asks direct questions, and the opposing party asks cross-examination questions. An appellant may elect to testify from the witness stand or from the appellant's table.

How is the record closed? What happens after a hearing? Can I appeal the decision?

Once all parties have presented their cases, the presiding officer will offer each party the opportunity to:

1. make a verbal statement or *closing argument* to the Commission at that time;
2. submit a written statement or *brief* to the Commission at a later time; or
3. *rest on the record* by making no further argument.

If the parties decide to make a closing argument, each party must explain why the evidence and law support the decision it wants the Commission to make.

If the parties decide to write a written statement or brief, the parties are notified of the due dates for such a written response **after** the transcript is received by the Commission. Parties must share their written response with all parties involved and submit it to the Commission.

To prepare a written response you might want to review the official transcript. You can do that by making an appointment with the Legal Services Office in Harrisburg. The official transcript can also be purchased from the court reporter. Contact the Legal Services Office for more information.

The record is considered closed when the transcript is received, or when the written responses are timely filed.

Generally, a decision will not be issued at the hearing itself. Following the closing of the record, the Commission will review the full record and issue a decision, which is called an adjudication. Adjudications are legal documents that state what appellant did and what the appointing authority did in leading up to the personnel action (findings of fact); a narrative explaining the reasons for the decision

(discussion); whether the appointing authority had good or just cause for the personnel action or whether the personnel action was discriminatory (conclusion(s) of law), and a final Order.

Copies of the adjudication are mailed to all parties involved. A copy is also posted online at www.scsc.pa.gov. [Back to Top](#)

There are two options to appeal an adjudication. One option is to submit a request for reconsideration to the Commission within fifteen (15) calendar days of when the adjudication was mailed. The second option is to file an appeal to the Commonwealth Court within thirty (30) calendar days of the mailing date of the adjudication.

Both options have strict timeline limitations. Asking for reconsideration does not extend the time for filing a Commonwealth Court appeal.

Pennsylvania State Civil Service Commission

The Commission is a three-member, bipartisan, independent body appointed by the Governor with the advice and consent of the Pennsylvania State Senate. Of the members, one is designated by the Governor as chairman and one must be a veteran.

Act 71 of 2018 (Civil Service Reform) was signed into law by Governor Tom Wolf on June 28, 2018. Its purpose is to ensure Pennsylvania maintains its long-standing merit-based hiring system, preserves its commitment to veterans' preference, and in personnel actions ensures an appeal can be filed with the Commission.

The Commissioners hear and rule on appeals filed by employees and job seekers involving claims against state agencies, applicable Pennsylvania counties and housing authorities. The Commission provides a fair and impartial forum for appeals to be heard and decisions rendered.

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*The hearing room in Strawberry Square Complex,
Harrisburg*

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Legal Services Office
P.O. Box 569
Harrisburg, PA 17108-0569

Physical Address:

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Bowman Tower, 4th Floor
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Harrisburg, PA

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