

1. THE HEARING

Generally, the hearing will be held at the Commission's office in Harrisburg, Philadelphia or Pittsburgh. Every hearing is open to the public. A court reporter will be present to record the testimony and create a "transcript," which is a written record of the testimony that also includes any documents submitted at the hearing. The hearing transcript is generally available within ten (10) business days following the close of the hearing record. The transcript may be reviewed at the Commission's office, and/or purchased from the court reporting service.

One or more of the three Commissioners, or a Hearing Officer, will preside at the hearing. (The law does not require that a Commissioner be present at the hearing). The presiding officer will begin by explaining the purpose of the hearing. The presiding officer will then enter the appeal request form, the notice of public hearing, and other relevant administrative documents into the record as Commission exhibits.

If you have a document that you believe will help your appeal, and you want it entered into the record as your exhibit, bring the original and three (3) copies to the hearing. Tell the presiding officer that you have exhibits that you want to enter into the record.

An individual called as a witness to testify at the hearing will be asked by the presiding officer to swear or affirm that s/he will tell the truth. The witness must take the oath or affirmation prior to testifying. Witnesses will only be permitted to testify about events they either personally observed or participated in. A witness is not permitted to testify about what someone else told them or about something they read; and, written statements will not be accepted to take the place of testimony. These things are examples of "hearsay." Hearsay will not be allowed into the record if objected to at the hearing.

You may object to the exhibits and testimony that the agency offers into the record. The

agency may object to your exhibits and testimony. If the presiding officer decides to grant ("sustain") the objection, the exhibit or testimony will not become part of the record. If the presiding officer denies ("overrules") the objection, the exhibit or testimony becomes part of the record. Also, if there is no objection, the exhibits or testimony become part of the record. If either party fails to appear at the hearing, the Commission may rule in favor of the party that is present.

2. ACCOMMODATIONS

If you intend to request an accommodation due to a disability, or if you intend to request an interpreter due to having limited English proficiency or being deaf or hard of hearing, please contact the Commission's Legal Services Office at least two weeks prior to the scheduled hearing date. The cost of providing the interpreter will be paid by the Commission. You may contact the Legal Services Office via telephone; Telecommunications Relay Service (TRS); fax; or e-mail.

Legal Services Office	717-783-2924
	717-783-1444
Fax	717-772-5120
TRS	: 711
E-Mail	ra-cs-legalsvcsQandA@pa.gov

3. REPRESENTATION AT THE HEARING

The agency will be represented by an attorney. You may represent yourself or retain an attorney to represent you. You may not be represented by a non-lawyer person, such as a friend or spouse. You are responsible for securing your own attorney.

4. SUBPOENAS

A. Witness Subpoenas

You may request that the Commission issue a subpoena to compel a witness to appear at the hearing to testify for you. (The witness may also want the 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 and time and location. To obtain a subpoena, you must submit a written request to the Commission listing your witnesses **and explaining why** each one is important and necessary to prove your case. Also **send a copy** of your request **to the agency attorney**.

If the Commission approves your subpoena request, the subpoena will be prepared and mailed to you. The Commission does not serve the subpoena on the witness. It will be **your responsibility** to see the witness is personally served with the subpoena at least forty-eight (48) hours prior to the hearing. Personal service does not mean mailed to a witness, put in an office mailbox or in-box, or given to a third party 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).

Be prepared to offer the witness a fee for appearing at the hearing, and for his/her transportation to and from the hearing. You must pay the witness the applicable fees before the hearing unless you and the witness have agreed to a different arrangement.

B. Document Subpoenas

If you believe that the agency has documents in its possession that may support your testimony or that of your witnesses, you may request that the Commission issue a subpoena to compel the agency to give you those documents. Such documents might include letters, e-mails, job descriptions, employee performance reviews, or doctor's notes.

To obtain a subpoena for a document, submit a **written** request to the Commission for a *Subpoena Duces Tecum*. In your request, describe the requested document as precisely as you can; explain why the document is necessary to support your case; explain who has the document; and specify when the document was created. (A subpoena will usually be limited to documents created within the previous three years). Also **send a copy** of

your subpoena request **to the agency**. See *Commission Rules Section 105.14a* for more information about Subpoenas.

If the Commission approves your request, the subpoena will be prepared and mailed to you. The Commission does not serve the subpoena. You must serve the subpoena on the person who has the documents. It is **your responsibility** to see that the *Subpoena Duces Tecum* is served at least five (5) workdays prior to the hearing.

5. TYPES OF HEARINGS

A. 951(a) Hearings

If your appeal is challenging the removal, furlough, demotion, or suspension AND you are a regular status employee, the hearing will be held under Section 951(a) of the Civil Service Act.

At a 951(a) hearing, the agency presents its evidence first. The agency must present evidence that shows the reason(s) why it removed, furloughed, demoted or suspended you. The presiding official will ask the agency attorney to call witnesses to explain the reason(s) why. The agency attorney will ask each witness questions – this is called "direct examination." Once the agency attorney has finished asking the witness questions, you or your attorney may ask questions – this is called "cross-examination." Questions that you or your attorney asks on cross-examination must be related to the same matters that the agency attorney asked the witness about on direct examination.

After the agency has presented all of its evidence, you will have the opportunity to present your evidence. You may testify on your own behalf, and explain why you disagree with the agency's action or disagree with the testimony of the agency's witnesses. Once you have finished testifying on your own behalf, the agency's attorney may ask you questions on cross-examination. Similarly, if you have other witnesses testify on your behalf, you or your attorney will ask each witness questions, and

the agency's attorney may then cross-examine each witness.

If you choose not to be represented by an attorney, you may ask the presiding officer any questions that you may have about hearing procedures.

B. 951(b) Hearings

If you are a probationary status employee, the hearing will be held under Section 951(b) of the Civil Service Act. Also, if you are a regular status employee, AND you allege that the appointing authority's personnel action was motivated by discrimination, the hearing will be held under Section 951(b).

At a 951(b) hearing, it is **your responsibility** to present evidence showing that the personnel action that the agency took against you was motivated by discrimination. At a 951(b) hearing, you will present your evidence first. You or your attorney must present testimony or documents that show that the agency treated you unfairly by treating you differently from other employees in a similar situation. If you testify on your own behalf, the agency's attorney may ask you questions on cross-examination. Similarly, if you have other witnesses testify on your behalf, you or your attorney will ask each witness questions, and the agency's attorney may then cross-examine each witness.

After you have presented all of your evidence, the agency will have the opportunity to present its evidence showing that it did not discriminate against you. If you choose not to be represented by an attorney, you may ask the presiding officer any questions that you may have about hearing procedures.

C. 951(d) Hearings

The purpose of a hearing held under Section 951(d) of the Civil Service Act is to allow the Commissioners to investigate a personnel action. A hearing under Section 951(d) is held at the sole discretion of the Commissioners.

At a Section 951(d) hearing, neither you nor the agency is responsible for presenting evidence to prove a position as to the personnel action being investigated. BUT the Commission will give both you and the agency an opportunity to offer the Commission testimony or documents that will further its investigation. The presiding officer will decide whether you or the agency presents evidence first.

6. CLOSING THE HEARING RECORD

Once you have presented all of your evidence, and the agency has presented all of its evidence, the presiding officer will offer each party the opportunity to either make a verbal statement or "closing argument" to the Commission at that time; to submit a written statement or "brief" to the Commission at a later time; or to "rest on the record" by making no further argument.

If both parties decide to make a closing argument, you will be allowed to explain to the Commission why the evidence and the law support the decision that you want the Commission to make. The agency will be allowed the same opportunity. Once both parties have made a closing argument, the record will be closed, and no further evidence will be accepted into the hearing record.

If both parties decide to submit a brief, the Commission will notify you and the agency by letter as to when the briefs are due. Generally, the briefs are due after the hearing transcript is completed. You must submit an original and three (3) copies of your brief to the Commission, and send one (1) copy to the agency. After the Commission receives both briefs, or after the due date(s) if the Commission does not receive the brief(s), the hearing record will be closed.

7. THE HEARING DECISION (Adjudication and Order)

Generally, the Commissioners will not issue a decision at the hearing itself. There are two unusual exceptions: the Commissioners may

grant the agency's request to dismiss your Section 951(b) appeal if you did not present enough evidence to show that the agency's personnel action was motivated by discrimination. Also, if you fail to attend any hearing, the Commission may dismiss your appeal at the hearing. After the hearing, the Commission will still issue a written decision confirming the dismissal of your appeal.

In all other instances, the Commissioners will review the testimony and documents in the hearing record, as well as any briefs submitted by the parties. The Commissioners will base their decision solely on the evidence in the hearing record, and the Civil Service Act and Rules. Following the closing of the record, the Commission has ninety (90) calendar days to review the full record and issue a decision, which is called an adjudication. In their decision, the Commissioners will state what they believe you did and the appointing authority did in leading up to the personnel action ("make findings of fact"); decide whether the appointing authority had good or just cause for the personnel action, or whether the personnel action was discriminatory ("enter conclusions of law"); and the Commissioners will discuss how they arrived at their decision.

If you lose your appeal, you may request that the Commission reconsider its decision. You must submit your petition for reconsideration within fifteen (15) calendar days of the **mailing date** of the Commission's decision. Your petition for reconsideration must be in writing, and you must state precisely what you object to in the Commission's decision. Consult Section 105.17 of the Rules of the Civil Service Commission for more information about a petition for reconsideration. You may also ask the Commonwealth Court of Pennsylvania to review the Commission's decision. You must submit your petition for review to Commonwealth Court within thirty (30) calendar days of the **mailing date** of the Commission's decision.

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CIVIL SERVICE HEARING GUIDE



The Commission's current Hearing Schedule, Adjudications and Orders issued during the previous 90 days, and the current year's Commonwealth Court Decisions are accessible online at www.scsc.pa.gov