Understanding the Lifecycle of Merit Appeals
California State Personnel Board

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State Personnel Board Overview

Article IV of the California Constitution provides the Board with its membership and duties.

- Establishes Merit based civil service system.
- Appoints Executive Officer.
State Personnel Board Overview

• Identifies positions exempt from civil service.

• Approves temporary appointments.

• Establishes Veterans' preference.
SPB’s Primary Duties for CIVIL Service

• Charged with overseeing merit-based, job-related recruitment and selection process for the hiring of state employees;

• Provides direction to departments through simplifying civil service laws, rules, and policy;
SPB’s Primary Duties for Civil Service

• Audits departments for merit system compliance;

• Investigates and adjudicates alleged violations of civil service law which are filed by employees, applicants, and members of the public. (Appeals)
Merit Appeals

• Complaint of Discrimination/Retaliation/Harassment based upon Disability and Medical Condition, and Denial of Reasonable Accommodation.

• Request to file charges.
Merit Appeals

- Examination Appeals
- Merit Issue Complaints
- Withholds from Certification
- Voided Appointments
Merit Appeals

• Pre-Employment Medical/Psychological Disqualification.

• Failure of Pre-employment Drug Test.

• Out-of-class claim for purposes of taking an examination.
Merit Appeals

• Dismissed Employee’s Request Permission to take a Civil Service Examination.
Merit Appeals Process

• Once an appeal is accepted, a letter will go out to the parties notifying them of acceptance of the appeal, along with the assigned case number.

• The SPB will also send out a request for information to the hiring authority or Department relative to the details of the case.
Adjudication of Merit Appeals

• Investigative review (no hearing)
  ▪ Analyst conducts investigation
  ▪ May or may not contact parties
Adjudication of Merit Appeals

- Informal Hearing
  - No more than two hours
  - Hearing officer asks questions of the parties
  - No evidence is presented by either party (submitted prior to hearing)
Adjudication of Merit Appeals

At the Board’s discretion, any matter can be converted to an informal hearing or evidentiary hearing.

Parties may be subpoenaed for documents or for testimony.
Adjudication of Merit Appeals

All appeals are reviewed for jurisdiction prior to acceptance.

Finalization of Appeals are either adopted by the five member Board at a regularly scheduled Board meeting, or a final determination is issued by the Appeals Division.
The Board may adopt, remand back to Appeals Division, or issue a decision on its own.

There is no remedy for parties contemplated in regulation or statute if parties do not agree with SPB’s final determination or decision. The next step is to appeal the matter before Superior Court.
Complaint of Discrimination/Retaliation/Harassment Based upon Disability and Medical Condition, and Denial of Reasonable Accommodation.
Complaint of Discrimination/Retaliation/Harassment

Filing timelines: within one year of last act with the appointing authority. Raised to SPB if complainant doesn’t agree with appointing authority’s decision.
Complaint of Discrimination/Retaliation/Harassment

• MUST file with the appointing authority’s EEO office first. SPB cannot accept appeals that haven’t gone through the department process first.

  ▪ Appellants must provide a copy of the filing to the EEO office with appeal.
SPB ONLY accepts discrimination, harassment, and retaliation on the basis of: mental disability; physical disability; medical condition; and denials of reasonable accommodation from State civil service employees and applicants.
Complaint of Discrimination/Retaliation/Harassment

• Discrimination complaints may be consolidated with evidentiary matters, i.e., adverse action.

• Once accepted, discrimination cases are referred for an evidentiary hearing and are no longer in Merit Appeals.
Request to File Charges

Filing timeline: within one year of the event or events upon which the appeal is based.
Request to File Charges

• A Request to File charges is filed when an individual seeks adverse action against a State civil service employee.

• Charges filed by a State employee shall not include issues covered by the State's employee grievance or other merit appeal processes until those appeal processes have been exhausted.
Request to File Charges

• Resolved through the Investigative review process. If the appeal is granted, then it is referred for an evidentiary hearing.

• For all Request to File Charges appeals, a proposed decision drafted by the Appeals Division is submitted to the Board for adoption.
Examination Appeals

• Filing timelines: Appeals shall be filed within 30 days of the date that examination results are mailed.

• Examination appeals include appeals from CEA examinations and LEAP examinations.
Examination Appeals

For most examinations, there are four grounds for appeal:

• Erroneous Interpretation of Minimum Qualifications;
• Fraud;
• Discrimination;
or Significant Irregularity
Examination Appeals

• Exam appeals are resolved through the investigative review process, with a final determination rendered by the Appeals Division.
Examination Appeals

Remedies on Granted appeal:

• entry into the examination;
• re-administration of the examination;
• an “alternate score.” (interview panel assigns alternate scores only when a candidate is eliminated from the examination for not meeting the minimum qualifications)
Withholds from Certification

- Filing timelines: within 30 days of the date the notice of withhold is mailed.

- When an applicant receives a passing score on an exam, but is notified that his/her name is being withheld from the list, he/she can appeal.
Withholds from Certification

• Two kinds of withholds:
  ▪ Failure to meet the MQ’s
  ▪ Suitability (primarily peace officer)

• Resolved through the Investigative review process.
Withholds from Certification

For all Withhold appeals, a proposed decision drafted by the Appeals Division is submitted to the Board for adoption.
Voided Appointment

- Filing timelines: appeal must be filed within 30 days of the date the notice is mailed.
Voided Appointment

When an employee’s appointment in a civil service job classification is voided because of fraud or irregularity in the appointment process, that individual can appeal the decision.

✓ MQ’s are not met
✓ Irregularity in the process, i.e., not reachable on the list.
Voided Appointment

• Typically resolved through either the investigative review process or through an informal hearing.

• For all Voided Appointment appeals, a proposed decision drafted by the Appeals Division is submitted to the Board for adoption.
Medical/Psychological Disqualification; Failure of Pre-employment Drug Test

• Filing timelines: appeals filed within 30 days of the date of service of the notice of disqualification
Medical/Psychological Disqualification; Failure of Pre-employment Drug Test

• Medical Disqualification
• Psychological Disqualification
• Disqualification from a pre-employment drug test
Medical/Psychological Disqualification; Failure of Pre-employment Drug Test

• Resolved through an informal hearing.

• For all of these appeals, a proposed decision drafted by the Appeals Division is submitted to the Board for adoption.
Merit Issue Complaint

- Filing timelines: within 30 days of Department response (or after 90 days of non-response)
Merit Issue Complaint

Rule 66.1:

Merit issue complaints are complaints that the State Civil Service Act or Board regulation or policy has been violated by a state agency. These complaints include but are not limited to, interference with promotional opportunities, interference with a person's access to any SPB appeals process, and the designation of managerial positions pursuant to Government Code section 3513.
Merit Issue Complaint

- The complaint should be filed with the department responsible for the alleged act or decision.
  - SPB may take complaints which have not gone through the Department process first.
Merit Issue Complaint

• Merit Issue Complaints are resolved through the investigative review process

• A final determination rendered by the Appeals Division
Dismissed Employee's Request to Take Civil Service Examination (Rule 211)

- Filing timelines: within 30 days from the date of receipt of CalHR’s decision.

- When an employee is dismissed from permanent civil service, he/she may not reapply or take an examination without approval from CalHR.
Dismissed Employee's Request to Take Civil Service Examination (Rule 211)

- If CalHR does not consent, then the former employee may appeal CalHR’s decision.
- Resolved through an informal hearing.
- For Rule 211 appeals, a proposed decision drafted by the Appeals Division is submitted to the Board for adoption.
Use of Out of Class Experience in Meeting the MQ’s for an Examination (Rule 212)

• Filing timelines: within 30 days of receipt of the denial.

• Rule 212 specifies requirements on how to obtain approval for out-of-class work experience.
  ▪ T&D assignment
  ▪ Out of class assignment
Use of Out of Class Experience in Meeting the MQ’s for an Examination (Rule 212)

• If the appointing authority/Department denies the use of out-of-class work for EXAM purposes only, the Complainant can appeal the decision to the SPB.

• Does not usurp grievance process for working out of class.
  ▪ Grievance results may be considered by the Board in investigating this type of claim.
Use of Out of Class Experience in Meeting the MQ’s for an Examination (Rule 212)

- Resolved through either the investigative review process or through an informal hearing.

- For all Rule 212 appeals, a proposed decision drafted by the Appeals Division is submitted to the Board for adoption.
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