

(2) Upon hearing such an appeal, the board shall, with respect to each charge appealed to the board, sustain the charge, dismiss the charge, or sustain the charge in part and dismiss the charge in part. If the deciding official is sustained (in whole or in part) with respect to any such charge, the board shall—

(A) approve the action as imposed;

(B) approve the action with modification, reduction, or exception; or

(C) reverse the action.

(3) A board shall afford an employee appealing an adverse action under this section an opportunity for an oral hearing. If such a hearing is held, the board shall provide the employee with a transcript of the hearing.

(4) The board shall render a decision in any case within 45 days of completion of the hearing, if there is a hearing, and in any event no later than 120 days after the appeal commenced.

(d)(1) After resolving any question as to whether a matter involves professional conduct or competence, the Secretary shall cause to be executed the decision of the Disciplinary Appeals Board in a timely manner and in any event in not more than 90 days after the decision of the Board is received by the Secretary. Pursuant to the board's decision, the Secretary may order reinstatement, award back pay, and provide such other remedies as the board found appropriate relating directly to the proposed action, including expungement of records relating to the action.

(2) If the Secretary finds a decision of the board to be clearly contrary to the evidence or unlawful, the Secretary may—

(A) reverse the decision of the board, or

(B) vacate the decision of the board and remand the matter to the Board for further consideration.

(3) If the Secretary finds the decision of the board (while not clearly contrary to the evidence or unlawful) to be not justified by the nature of the charges, the Secretary may mitigate the adverse action imposed.

(4) The Secretary's execution of a board's decision shall be the final administrative action in the case.

(e) The Secretary may designate an employee of the Department to represent management in any case before a Disciplinary Appeals Board.

(f)(1) A section 7401(1) employee adversely affected by a final order or decision of a Disciplinary Appeals Board (as reviewed by the Secretary) may obtain judicial review of the order or decision.

(2) In any case in which judicial review is sought under this subsection, the court shall review the record and hold unlawful and set aside any agency action, finding, or conclusion found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) obtained without procedures required by law, rule, or regulation having been followed; or

(C) unsupported by substantial evidence.

(Added Pub. L. 102-40, title II, §203(a), May 7, 1991, 105 Stat. 203; amended Pub. L. 102-405, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsec. (b)(3)(B), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in section 4110 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

1992—Subsec. (b)(1). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director" in subpars. (A) and (B).

§ 7463. Other adverse actions

(a) The Secretary shall prescribe by regulation procedures for the consideration of grievances of section 7401(1) employees arising from adverse personnel actions in which each action taken either—

(1) is not a major adverse action; or

(2) does not arise out of a question of professional conduct or competence.

Disciplinary Appeals Boards shall not have jurisdiction to review such matters, other than as part of a mixed case (as defined in section 7462(a)(3) of this title).

(b) In the case of an employee who is a member of a collective bargaining unit under chapter 71 of title 5, the employee may seek review of an adverse action described in subsection (a) either under the grievance procedures provided through regulations prescribed under subsection (a) or through grievance procedures determined through collective bargaining, but not under both. The employee shall elect which grievance procedure to follow. Any such election may not be revoked.

(c)(1) In any case in which charges are brought against a section 7401(1) employee which could result in a major adverse action and which do not involve professional conduct or competence, the employee is entitled to the same notice and opportunity to answer with respect to those charges as provided in subparagraphs (A) and (B) of section 7462(b)(1) of this title.

(2) In any other case in which charges are brought against a section 7401(1) employee, the employee is entitled to—

(A) an advance written notice stating the specific reason for the proposed action, and

(B) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer.

(d) Grievance procedures prescribed under subsection (a) shall include the following:

(1) A right to formal review by an impartial examiner within the Department of Veterans Affairs, who, in the case of an adverse action arising from a question of professional conduct or competence, shall be selected from the panel designated under section 7464 of this title.

(2) A right to a prompt report of the findings and recommendations by the impartial examiner.

(3) A right to a prompt review of the examiner's findings and recommendations by an official of a higher level than the official who decided upon the action. That official may accept, modify, or reject the examiner's recommendations.

(e) In any review of an adverse action under the grievance procedures prescribed under subsection (a), the employee is entitled to be represented by an attorney or other representative of the employee's choice at all stages of the case.

(Added Pub. L. 102-40, title II, §203(a), May 7, 1991, 105 Stat. 205.)

PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in section 4110 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

§ 7464. Disciplinary Appeals Boards

(a) The Secretary shall from time to time appoint boards to hear appeals of major adverse actions described in section 7462 of this title. Such boards shall be known as Disciplinary Appeals Boards. Each board shall consist of three employees of the Department, each of whom shall be of the same grade as, or be senior in grade to, the employee who is appealing an adverse action. At least two of the members of each board shall be employed in the same category of position as the employee who is appealing the adverse action. Members of a board shall be appointed from individuals on the panel established under subsection (d).

(b)(1) In appointing a board for any case, the Secretary shall designate one of the members to be chairman and one of the members to be secretary of the board, each of whom shall have authority to administer oaths.

(2) Appointment of boards, and the proceedings of such boards, shall be carried out under regulations prescribed by the Secretary. A verbatim record shall be maintained of board hearings.

(c)(1) Notwithstanding sections 5701 and 7332 of this title, the chairman of a board, upon request of an employee whose case is under consideration by the board (or a representative of that employee) may, in connection with the considerations of the board, review records or information covered by those sections and may authorize the disclosure of such records or information to that employee (or representative) to the extent the board considers appropriate for purposes of the proceedings of the board in that case.

(2) In any such case the board chairman may direct that measures be taken to protect the personal privacy of individuals whose records are involved. Any person who uses or discloses a record or information covered by this subsection for any purpose other than in connection with the proceedings of the board shall be fined not more than \$5,000 in the case of a first offense and not more than \$20,000 in the case of a subsequent offense.

(d)(1) The Secretary shall provide for the periodic designation of employees of the Depart-

ment who are qualified to serve on Disciplinary Appeals Boards. Those employees shall constitute the panel from which board members in a case are appointed. The Secretary shall provide (without charge) a list of the names of employees on the panel to any person requesting such list.

(2) The Secretary shall announce periodically, and not less often than annually, that the roster of employees on the panel is available as described in paragraph (1). Such announcement shall be made at Department medical facilities and through publication in the Federal Register. Notice of a name being on the list must be provided at least 30 days before the individual selected may serve on a Board or as a grievance examiner. Employees, employee organizations, and other interested parties may submit comments to the Secretary concerning the suitability for service on the panel of any employee whose name is on the list.

(3) The Secretary shall provide training in the functions and duties of Disciplinary Appeals Boards and grievance procedures under section 7463 of this title for employees selected to be on the panel.

(Added Pub. L. 102-40, title II, §203(a), May 7, 1991, 105 Stat. 206.)

PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in section 4110 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

SUBCHAPTER VI—REGIONAL MEDICAL EDUCATION CENTERS

§ 7471. Designation of Regional Medical Education Centers

(a) In carrying out the Secretary's functions under section 7302 of this title with regard to the training of health personnel, the Secretary shall implement a program under which the Secretary shall designate as Regional Medical Education Centers such Department hospitals as the Secretary determines appropriate to carry out the provisions of this subchapter.

(b) Each Regional Medical Education Center (hereinafter in this subchapter referred to as "Center") designated under subsection (a) shall provide continuing medical and related education programs for personnel eligible for training under this subchapter. Such programs shall include the following:

(1) The teaching of newly developed medical skills and the use of newly developed medical technologies and equipment.

(2) Advanced clinical instruction.

(3) The opportunity for conducting clinical investigations.

(4) Clinical demonstrations in the use of new types of health personnel and in the better use of the skills of existing health personnel.

(5) Routine verification of basic medical skills and, where determined necessary, remediation of any deficiency in such skills.

(Added Pub. L. 102-40, title IV, §401(b)(5), May 7, 1991, 105 Stat. 237.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4121 of this title prior to the repeal of