

with provisions for effect on pending proceedings, see section 401 of Pub. L. 115-397, set out as a note under section 1301 of this title.

§ 1402a. Preliminary review of claims

(a) Preliminary review by hearing officer

(1) Appointment

Not later than 7 days after transmission to the employing office of a claim pursuant to section 1402(b) of this title, the Executive Director shall appoint a hearing officer to conduct a preliminary review of the claim.

(2) Process for appointment

The Executive Director shall appoint a hearing officer under this subsection in the same manner and in accordance with the same requirements and procedures applicable to the appointment of a hearing officer under section 1405(c) of this title.

(b) Assessments required

In conducting a preliminary review of a claim under this section, the hearing officer shall assess each of the following:

(1) Whether the claimant is a covered employee authorized to obtain relief relating to the claim under this subchapter.

(2) Whether the office which is the subject of the claim is an employing office under this chapter.

(3) Whether the individual filing the claim has met the applicable deadlines for filing the claim under this subchapter.

(4) The identification of factual and legal issues involved with respect to the claim.

(5) The specific relief sought by the individual.

(6) Whether, on the basis of the assessments made under paragraphs (1) through (5), the individual filing the claim is a covered employee who has stated a claim for which, if the allegations contained in the claim are true, relief may be granted under this subchapter.

(7) The potential for the settlement of the claim without a formal hearing as provided under section 1405 of this title or a civil action as provided under section 1408 of this title.

(c) Report on review

(1) Report

Not later than 30 days after a claim is filed under section 1402 of this title, the hearing officer shall submit to the individual filing the claim and the office which is the subject of the claim a report on the preliminary review conducted under this section, and shall include in the report the hearing officer's determination as to whether the individual is a covered employee who has stated a claim for which relief may be granted under this subchapter (as described in paragraph (6) of subsection (b)). The submission of the report shall conclude the preliminary review.

(2) Extension of deadline

The hearing officer may (upon notice to the individual filing the claim and the employing office which is the subject of the claim) use an additional period of not to exceed 30 days to conclude the preliminary review.

(d) Effect of determination of failure to state claim for which relief may be granted

If the hearing officer's report on the preliminary review of a claim under subsection (c) includes the determination that the individual filing the claim is not a covered employee or has not stated a claim for which relief may be granted under this subchapter—

(1) the individual (including an individual who is a Library claimant, as defined in section 1401(d)(1) of this title) may not obtain a formal hearing with respect to the claim as provided under section 1405 of this title; and

(2) the hearing officer shall provide the individual and the Executive Director with a written notice that the individual may file a civil action with respect to the claim in accordance with section 1408 of this title.

(e) Transmission of report on preliminary review of certain claims to congressional ethics committees

In the case of a hearing officer's report under subsection (c) on the preliminary review of a claim alleging a violation described in section 1415(d)(1)(A) of this title, the hearing officer shall transmit the report to—

(1) the Committee on Ethics of the House of Representatives, in the case of such an act by a Member of the House of Representatives (including a Delegate or Resident Commissioner to the Congress); or

(2) the Select Committee on Ethics of the Senate, in the case of such an act by a Senator.

(Pub. L. 104-1, title IV, §403, as added Pub. L. 115-397, title I, §103(a), Dec. 21, 2018, 132 Stat. 5303.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(2), was in the original "this Act", meaning Pub. L. 104-1, Jan. 23, 1995, 109 Stat. 3, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables.

PRIOR PROVISIONS

A prior section 403 of Pub. L. 104-1 was renumbered section 404 and is classified to section 1403 of this title.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective upon expiration of the 180-day period beginning on Dec. 21, 2018, with provisions for effect on pending proceedings, see section 401 of Pub. L. 115-397, set out as an Effective Date of 2018 Amendment note under section 1301 of this title.

§ 1403. Mediation

(a) Availability of mediation

(1) Notification regarding mediation

(A) Covered employee

Upon receipt of a claim under section 1402 of this title, the Office shall notify the covered employee who filed the claim about the process for mediation under this section and the deadlines applicable to such mediation.

(B) Employing office

Upon transmission to the employing office of the claim pursuant to section 1402(b) of this title, the Office shall notify the employing office about the process for mediation under this section and the deadlines applicable to such mediation.

(2) Initiation**(A) In general**

During the period described in subparagraph (B), either the covered employee who filed a claim under section 1402 of this title or the employing office named in the claim may file a request for mediation with the Office, which shall promptly notify the other party. If the other party agrees to the request, the Office shall promptly assign a mediator to the claim, and conduct mediation under this section.

(B) Timing

A covered employee or an employing office may file a request for mediation under subparagraph (A) during the period beginning on the date that the covered employee or employing office, respectively, receives a notification under paragraph (1) regarding a claim under section 1402 of this title and ending on the date on which a hearing officer issues a written decision relating to the claim under section 1405(g) of this title or the covered employee files a civil action with respect to the claim in accordance with section 1408 of this title, as applicable.

(3) Failure to request or accept mediation to have no effect on treatment of claim

The failure of a party to request mediation under this section with respect to a claim, or the failure of a party to agree to a request for mediation under this section, may not be taken into consideration under any procedure under this title with respect to the claim, including a preliminary review under section 1402a of this title, a formal hearing under section 1405 of this title, or a civil action under section 1408 of this title.

(b) Process

Mediation under this section—

(1) may include the Office, the covered employee, the employing office, and one or more individuals appointed by the Executive Director from the master list developed and maintained under subsection (e), and

(2) shall involve meetings with the parties during which, at the request of any of the parties, the parties shall be separated, for the purpose of resolving the dispute between the covered employee and the employing office.

(c) Mediation period

The mediation period shall be 30 days, beginning on the first day after the second party agrees to the request for the mediation. The mediation period may be extended for one additional period of 30 days at the joint request of the covered employee and employing office. Any deadline in this chapter relating to a claim for which mediation has been agreed to in this section, that has not already passed by the first

day of the mediation period, shall be stayed during the mediation period. The Office shall notify in writing the covered employee and the employing office when the mediation period has ended.

(d) Independence of mediation process

No individual, who is appointed by the Executive Director to mediate, may conduct or aid in a hearing conducted under section 1405 of this title with respect to the same matter or shall be subject to subpoena or any other compulsory process with respect to the same matter.

(e) Master list of mediators**(1) Development and maintenance of master list**

The Executive Director shall develop and maintain a master list of individuals who are experienced in adjudicating, arbitrating, or mediating the kinds of personnel and other matters for which mediation may be held under this section. Such list may include, but not be limited to, members of the bar of a State or the District of Columbia and retired judges of the United States courts.

(2) Consideration of candidates

In developing the master list under this subsection, the Executive Director shall consider candidates recommended by the Federal Mediation and Conciliation Service or the Administrative Conference of the United States.

(Pub. L. 104-1, title IV, §404, formerly §403, Jan. 23, 1995, 109 Stat. 32; Pub. L. 114-6, §2(a), Mar. 20, 2015, 129 Stat. 81; renumbered §404 and amended Pub. L. 115-397, title I, §§101(c)(2), 104, Dec. 21, 2018, 132 Stat. 5301, 5305.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original “this Act”, meaning Pub. L. 104-1, Jan. 23, 1995, 109 Stat. 3, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables.

PRIOR PROVISIONS

A prior section 404 of Pub. L. 104-1 was classified to section 1404 of this title, prior to repeal by Pub. L. 115-397, title I, §101(c)(1), Dec. 21, 2018, 132 Stat. 5301.

AMENDMENTS

2018—Subsec. (a). Pub. L. 115-397, §104(a), amended subsec. (a) generally. Prior to amendment, text read as follows: “Not later than 15 days after receipt by the employee of notice of the end of the counseling period under section 1402 of this title, but prior to and as a condition of making an election under section 1404 of this title, the covered employee who alleged a violation of a law shall file a request for mediation with the Office.”

Subsec. (b)(2). Pub. L. 115-397, §104(b), substituted “meetings with the parties during which, at the request of any of the parties, the parties shall be separated,” for “meetings with the parties separately or jointly”.

Subsec. (c). Pub. L. 115-397, §104(c), substituted “The mediation period shall be 30 days, beginning on the first day after the second party agrees to the request for the mediation. The mediation period may be extended for one additional period of 30 days at the joint

request of the covered employee and employing office. Any deadline in this chapter relating to a claim for which mediation has been agreed to in this section, that has not already passed by the first day of the mediation period, shall be stayed during the mediation period.” for “The mediation period shall be 30 days beginning on the date the request for mediation is received. The mediation period may be extended for additional periods at the joint request of the covered employee and the employing office.”

2015—Subsec. (b)(1). Pub. L. 114-6, §2(a)(1), substituted “from the master list developed and maintained under subsection (e)” for “after considering recommendations by organizations composed primarily of individuals experienced in adjudicating or arbitrating personnel matters”.

Subsec. (e). Pub. L. 114-6, §2(a)(2), added subsec. (e).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-397 effective upon expiration of the 180-day period beginning on Dec. 21, 2018, with provisions for effect on pending proceedings, see section 401 of Pub. L. 115-397, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-6, §2(d), Mar. 20, 2015, 129 Stat. 82, provided that: “The amendments made by this section [amending this section and sections 1404 and 1416 of this title] shall apply with respect to mediations and other proceedings which are first initiated after the date of the enactment of this Act [Mar. 20, 2015].”

§ 1404. Repealed. Pub. L. 115-397, title I, § 101(c)(1), Dec. 21, 2018, 132 Stat. 5301

Section, Pub. L. 104-1, title IV, §404, Jan. 23, 1995, 109 Stat. 33; Pub. L. 114-6, §2(b), Mar. 20, 2015, 129 Stat. 81; Pub. L. 115-141, div. I, title I, §153(b)(2), Mar. 23, 2018, 132 Stat. 786, related to election of proceeding.

§ 1405. Hearing

(a) Requirement for hearings to commence in Office

(1) Hearing required upon request

If, not later than 10 days after a hearing officer submits the report on the preliminary review of a claim under section 1402a(c) of this title, a covered employee submits a request to the Executive Director for a hearing under this section, the Executive Director shall appoint an independent hearing officer pursuant to subsection (c) to consider the claim and render a decision, and a hearing shall be commenced in the Office.

(2) Exceptions

Paragraph (1) does not apply with respect to the claim if—

(A) the hearing officer’s report on the preliminary review of the claim under section 1402a(c) of this title includes the determination that the individual filing the claim is not a covered employee who has stated a claim for which relief may be granted under this title (as described in section 1402a(d) of this title); or

(B) the covered employee files a civil action as provided in section 1408 of this title with respect to the claim.

(b) Dismissal

A hearing officer may dismiss any claim that the hearing officer finds to be frivolous or that

fails to state a claim upon which relief may be granted.

(c) Hearing officer

(1) Appointment

Upon the filing of a request for a hearing under subsection (a), the Executive Director shall appoint an independent hearing officer to consider the request for a hearing under subsection (a) and render a decision. No Member of the House of Representatives, Senator, officer of either the House of Representatives or the Senate, head of an employing office, member of the Board, or covered employee may be appointed to be a hearing officer. The Executive Director shall select hearing officers on a rotational or random basis from the lists developed under paragraph (2). Nothing in this section shall prevent the appointment of hearing officers as full-time employees of the Office or the selection of hearing officers on the basis of specialized expertise needed for particular matters.

(2) Lists

The Executive Director shall develop master lists, composed of—

(A) members of the bar of a State or the District of Columbia and retired judges of the United States courts who are experienced in adjudicating or arbitrating the kinds of personnel and other matters for which hearings may be held under this chapter, and

(B) individuals expert in technical matters relating to accessibility and usability by persons with disabilities or technical matters relating to occupational safety and health.

In developing lists, the Executive Director shall consider candidates recommended by the Federal Mediation and Conciliation Service or the Administrative Conference of the United States.

(3) Prohibiting hearing officer conducting preliminary review from conducting hearing

The Executive Director may not appoint a hearing officer to conduct a hearing under this section with respect to a claim if the hearing officer conducted the preliminary review with respect to the claim under section 1402a of this title.

(d) Hearing

Unless a claim is dismissed before a hearing, a hearing shall be—

(1) conducted in closed session on the record by the hearing officer;

(2) commenced no later than 90 days after the Executive Director receives the covered employee’s request for the hearing under subsection (a), except that, upon mutual agreement of the parties or for good cause, the Office shall extend the time for commencing a hearing for not more than an additional 30 days; and

(3) conducted, except as specifically provided in this chapter and to the greatest extent practicable, in accordance with the principles and procedures set forth in sections 554 through 557 of title 5.