

CHAPTER 431

WITHHOLDING WITHIN-GRADE INCREASES

1. **PURPOSE.** This Chapter contains the requirements and procedures for withholding within-grade increases (WGI).

2. **ASSISTANCE.** Please refer to Chapter 001 of this Manual for the telephone number to call for additional information or further assistance relative to this Chapter.

3. **COVERAGE.** This Chapter covers Department of Navy (DON) General Schedule employees occupying permanent positions and Federal Wage System employees paid at less than the maximum step of their grade.

4. DEFINITIONS

a. *Days.* Refers to calendar days.

b. *Fact Finder.* An individual appointed by the reconsideration official to conduct an inquiry into the issue of the withholding of a WGI.

c. *Negative Determination.* A decision to withhold a WGI.

d. *Rating of Record.* The official annual or special summary performance rating for pay, performance award and retention purposes.

e. *Reconsideration Official.* Individual designated to reconsider a negative determination.

f. *Waiting Period.* The minimum creditable service time required to be eligible for consideration for a WGI.

g. *Withholding Official.* Individual authorized to withhold a WGI.

h. *Within-grade increase.* Periodic increase in an employee's rate of basic pay from one step of the grade of his/her position to the next higher step of that grade.

5. **DELEGATION OF AUTHORITY.** Heads of activities are delegated authority to grant or withhold a WGI and to reconsider a negative determination. This authority may be redelegated in writing to the lowest practicable level deemed appropriate.

6. RESPONSIBILITIES

a. *Activity Heads are responsible for:*

(1) Ensuring that the proper procedures are followed when a WGI is granted or withheld and when reconsideration of a negative determination is requested.

(2) Delegating authority to grant or withhold a WGI and to reconsider a negative determination.

(3) Ensuring that all supervisors are aware of the proper procedures applicable to the granting and withholding of a WGI and requesting reconsideration of a negative determination.

b. *The Supervisor is responsible for:*

(1) Establishing and communicating to each employee the performance requirements necessary to grant a WGI.

(2) Ensuring that WGI's are not granted automatically and that for each WGI granted the employee is performing at least at the fully successful level.

(3) Contacting Human Resources Office (HRO), Norfolk to initiate action to withhold a WGI.

(4) Ensuring that an employee whose performance falls below fully successful is not granted a WGI and that the employee has received or is issued a timely rating of record which supports withholding of the WGI.

(5) Assisting an employee in improving performance when it falls below the fully successful level.

(6) Completing a rating of record which supports the granting of a WGI and initiating action to grant the WGI should the employee's performance improve to a level which warrants such action.

c. *The Reconsideration Official is responsible for:*

(1) Contacting HRO Norfolk for guidance and assistance in processing the reconsideration request.

(2) Reviewing the request for reconsideration. At the option of the reconsideration official, such review may consist of any or all of the following:

(a) Reviewing the reconsideration file.

(b) Personally conducting an inquiry and reducing the results of such inquiry to writing.

(c) Appointing a fact finder to conduct an inquiry and report the findings of fact in writing to the reconsideration official. The reconsideration official may require the fact finder to make recommendations.

(d) Listening to an oral presentation by the employee or the employee's representative, transcribing verbatim or summarizing in writing such presentation, and allowing the employee or his/her representative to submit written exceptions to the summary for the reconsideration file, if desired.

(3) Determining whether to allow the employee's choice of representative. The reconsideration official may disallow the choice of an individual as a representative if it would result in a conflict of interest or position, a conflict with the priority needs of the activity, or would give rise to unreasonable costs to the Federal government. The terms of any applicable bargaining agreement govern representation for employees in exclusive bargaining units.

(4) Determining whether to reject reconsideration requests filed after the 15-day time limit. The time limit may be extended if the employee was not notified of the time limit and was not otherwise aware of it or if the employee was prevented by circumstances beyond his/her control from requesting reconsideration within the time limit.

(5) Providing the employee with a written final decision granting or denying the reconsideration request no later than 30 days after receipt. This decision shall consider the written presentation, oral presentation, if one is made, and the results of any investigation conducted.

(6) Transmitting the reconsideration file to HRO Norfolk after making a final written decision.

d. *Employee.* The employee is responsible for filing a written request for reconsideration within fifteen (15) days after receipt of the negative determination. It should set forth all of the information he/she is asking the reconsideration official to consider.

e. *HRO Norfolk.* HRO Norfolk provides advice and guidance concerning withholding and reconsideration actions.

7. WITHHOLDING A WITHIN-GRADE INCREASE

a. A WGI will be withheld for employees (not at the maximum step of his/her grade) whose rating of record does not reflect at least fully successful performance.

b. A written notice shall be given to an employee within thirty (30) days after completion of the period upon which denial of the WGI is based or upon completion of the waiting period.

This notice shall contain:

(1) The reasons for the negative determination and how the employee must improve to meet the fully successful level of performance.

(2) Critical elements, work plan requirements or objectives, if applicable, that the employee is not performing at least fully successfully and the performance standards necessary to support granting the WGI.

(3) Specific documented examples (work products) of performance below the fully successful level on which the negative determination is based.

(4) Employee's right to request reconsideration in writing not more than fifteen (15) days after receiving the notice of negative determination.

(5) The name and address of the official to whom the request for reconsideration is to be submitted.

8. PROCEDURES FOR RECONSIDERATION OF A NEGATIVE DETERMINATION

a. Upon receipt of a negative determination, an employee has the right to:

(1) Submit a written request for reconsideration stating the reasons for contesting the negative determination.

(2) An oral presentation, if desired, before the reconsideration official.

(3) A reasonable amount of official time, if in a duty status, to review the material relied upon to make the negative determination and to prepare a response.

(4) Be represented in requesting reconsideration of the negative determination. (See paragraph 6c(3) of this Chapter for information on disallowing a representative.)

9. TIMING OF ACTIONS

a. A WGI granted without any delay will be effective on the first day of the first pay period following completion of the required waiting period.

b. If the negative determination is reversed by the reconsideration official, the effective date of the WGI will be the original due date.

c. Delay in Determination

(1) If an administrative error, oversight, or delay causes a positive determination to be made after the waiting period is completed, the effective date of the WGI will be retroactive to the original due date.

(2) An employee's WGI determination shall be postponed at least 90 days when the employee does not have a rating of record for reasons such as:

(a) An employee has not been informed at least 90 days prior to the end of the waiting period of the specific requirements for performance at a fully successful level in his/her current position and has not been given a rating of record in any position within 90 days before the end of the waiting period.

(b) An employee is reduced in grade because of unacceptable performance to a position in which he/she is eligible for a WGI or will become eligible within 90 days.

d. When a WGI determination has been postponed, the employee will be informed in writing of the reason for the postponement, the length of time the rating period will be extended, and the performance requirements necessary to be granted a WGI.

e. If, following the delay, the employee's rating of record supports granting the WGI, it will be granted retroactive to the original due date.

f. A WGI may be delayed based on the amount of LWOP the employee has used in a specific year.

g. Actions After Withholding

(1) When a WGI is withheld, it may be granted at any time after the employee has demonstrated sustained fully successful performance and receives a rating of record at least at that level. The WGI should be granted on the first pay period following the effective date that at least a fully successful rating of record is submitted. At a minimum, the supervisor will determine whether the employee's performance warrants a WGI after each 52 calendar week period following the original due date.

(2) When a WGI has been granted where the employee's rating of record prior to the effective date did not reflect fully successful performance, the activity must so notify the employee and reduce the employee's rate of pay. Such a reduction is not an appealable adverse action (see CFR 752.401(c)(11)). The employee will be issued a notice of negative determination as described in paragraph 7b of this Chapter.

10. GRIEVANCE OR APPEAL RIGHTS

a. *General Schedule (GS) Employees*

(1) If the reconsideration official sustains the negative determination, a GS employee has the right to appeal the decision to the Merit Systems Protection Board (MSPB), unless covered by a collective bargaining agreement which does not exclude it from the negotiated grievance procedure. Employees who are covered by a collective bargaining agreement must grieve under the negotiated grievance procedure.

(2) A GS employee eligible to appeal to MSPB shall be furnished a copy of MSPB's regulations, the time limits for filing an appeal, the appropriate appeal form, and the address to which it should be forwarded.

b. *Federal Wage System Employees*

(1) If the reconsideration official sustains the negative determination, an employee in a bargaining unit covered by a collective bargaining agreement must use the negotiated grievance procedures, unless these decisions are excluded from the negotiated grievance procedure.

(2) Nonbargaining unit employees must use the DON Administrative Grievance System.

11. RECORDS

a. A reconsideration file must be established when an employee files a request for reconsideration. It will contain, at a minimum, copies of the following:

(1) Written negative determination and supporting documentation.

(2) Employee's written request for reconsideration.

(3) Report of investigation, if made.

(4) Summary of an oral reply, if applicable.

(5) The final activity decision on the request for reconsideration.

b. After action on the reconsideration request has been completed by the activity, the original file should be forwarded to HRO Norfolk for retention and use in any subsequent appeal.