

P&S PROCEDURES FOR APPEALING A SUMMARY DISMISSAL DECISION

The **Summary Dismissal Policy** describes the employee's right to appeal the decision asserting that the decision was not supported by substantial evidence, that the sanction was arbitrary or capricious, or that a violation of the Summary Dismissal Policy or procedures occurred.

Filing an Appeal

Within ten (10) working days of the notice of summary dismissal, the employee shall submit a written appeal to the respective Senior Vice President, Chief of Staff or the President (or his/her designee). The notice must state the grounds of appeal and the method of review elected as provided in the next paragraph.

Upon receipt of the notice of appeal, the Senior Vice President, Chief of Staff or President (or his/her designee) shall notify the Vice President, Human Resources (VP-HR) who shall convene an appeals committee to hear the evidence and to make a recommendation on the appeal. As an alternative, the employee may opt to have his/her appeal heard by an Administrative Law Judge, as governed by Iowa Code Chapter 17A.11 and Iowa Administrative Code Chapter 681—20. If the employee elects to have the appeal heard by an Administrative Law Judge, the Administrative Law Judge shall hold a hearing and submit written findings of fact and recommendations to the respective Senior Vice President, Chief of Staff or the President (or his/her designee).

Formation of Appeals Committee

Upon request, the P&S Council president shall provide the VP-HR the names of five possible P&S employees to serve on the three-member appeals committee. No member of the committee shall have a real or apparent conflict of interest with the appeal, nor shall any member be an employee of the same department or unit as the affected employee. One member of the committee must have current supervisory responsibility as a part of his/her current position and be employed at pay grade 35 or above. The employee and the initiator have the right to challenge the VP-HR selection of the committee members. Challenges must be made in writing no more than two working days after the VP-HR announces the committee members. The P&S Council president and the VP-HR will determine the standing of the challenges. If nominees are successfully challenged, then the VP-HR will assign a new committee member. The VP-HR will name the chair of the appeal committee.

Hearing

Within ten (10) working days after the committee is convened, the committee shall schedule a hearing to gather information concerning the appeal. The dismissed employee will be present as well as the initiator of the dismissal (the person or persons against whom the appeal is made) and any other person whom the parties or committee believe might help the committee in arriving at a decision. The hearing will be recorded. The VP-HR may issue additional procedures governing the hearing as needed.

At all times, the employee and the initiator may choose to have someone assist them in presenting their cases during the appeal process; however, the representative is present for support and to observe only and will not speak for the parties or otherwise present the cases on the parties' behalf. The choice of a representative shall be communicated to the committee in advance of the hearing. For good cause, the employee may seek advance approval from the committee to allow the representative to present the case on the employee's behalf. The committee has the discretion to grant or deny the request or to set further guidelines concerning the proceedings. If the committee grants the request, the initiator shall be afforded the same opportunity.

Standard of Review

With respect to the basis for termination, the committee's duty is to determine whether there is substantial evidence supporting dismissal. "Substantial evidence" means, after considering all the evidence presented, that the supervisor had a reasonable basis to conclude that the employee's conduct amounted to unacceptable performance or conduct (on or off the job). If the committee finds that there is substantial evidence the committee's duty is to recommend that the basis for termination has been established even if the committee personally disagrees with the conclusion.

With respect to the decision to terminate as opposed to imposition of another sanction, the committee's duty is to recommend that the dismissal be upheld unless the committee determines that the decision to terminate is so disproportionate as to be arbitrary and capricious.

With respect to an allegation of violation of procedure, the committee may recommend the decision be overturned if the procedural violation resulted in substantial unfairness to the employee. In the case of violation of procedure resulting in substantial unfairness, the committee's duty is to recommend reinstatement until the supervisor or unit has complied with the policy and procedures of the university, unless the committee finds that the supervisor or unit engaged in abusive disregard for university procedures, in which case the committee may make a different recommendation that is fair under the circumstances.

Committee Recommendation

Following the completion of the hearing, the committee shall make a written recommendation to the respective Senior Vice President, Chief of Staff or the President (or his/her designee) with a copy to the VP-HR. In all appeals, after the committee makes its recommendation, the committee chair shall collect all information and materials related to the appeal, including exhibits and the recording of the hearing, and forward to the VP-HR. The VP-HR shall maintain the record of the appeal. Any other materials maintained by the committee shall be destroyed unless instructed otherwise by University Counsel.

Decision on Appeal

The respective Senior Vice President, Chief of Staff or the President (or his/her designee) shall render a written decision within ten (10) working days of receipt of the committee or Administrative Law Judge recommendation. The decision will be sent to the employee with a copy to the VP-HR and the initiator. The decision of the respective Senior Vice President, Chief of Staff or the President (or his/her designee) is the final decision of the University.

If the decision is to reverse the summary dismissal action, the employee shall be returned to work with full pay, benefits, and back pay.

Further Appeals

Further appeal of a final decision may be made to the Iowa Board of Regents under the Board Policy Manual (Chapter 1.7).

No Retaliation

The University prohibits retaliation against an employee who uses or participates in the appeal process. <http://policy.iastate.edu/policy/nonretaliation/>