

FOREIGN SERVICE GRIEVANCE BOARD POLICIES AND PROCEDURES
Effective March 1, 2013

CONTENTS:

THE APPEAL PROCESS	PAGE 1
GRIEVANCE TIME GUIDELINES	PAGE 3
DISCOVERY	PAGE 7
MOTIONS	PAGE 11

THE APPEAL PROCESS

An employee not satisfied with an agency's decision in a grievance case may file an appeal with the Board as provided in 22 CFR 901-910 and in 3 FAM 4410. A grievant should be aware of the following:

Deadlines for Filing an Appeal

An employee's appeal must be filed with the Board no later than 60 days after the employee receives the agency decision. The 60-day period provides time to formulate a presentation to the Board. In the event that the agency fails to provide a decision within 90 days of the grievance submission at the agency level, the employee may appeal the grievance to the Board no later than 150 days after the date of the original presentation to the agency or within 60 days of receipt of the agency decision if it is issued later. The Board may extend or waive these time limits for good cause in individual cases.

The effective date of filing the appeal or any subsequent submissions with the Board is: (1) the date a submission is transmitted by facsimile (fax), registered, certified or other receipted mail, or registered mail in a diplomatic pouch or (2) the date of its receipt at the Board if delivered by other means, including by email or regular mail.

Method of Filing

Appeals and all other submissions must be e-mailed, mailed, faxed, sent by diplomatic pouch or hand-delivered by no later than 5:00 p.m. to the Foreign Service Grievance Board at one of the following addresses:

- e-mail address is FSGB@state.gov;
- mailing address is SA-15, Suite 3100, Washington, D.C. 20522-1531;
- delivery address (during normal business hours, which are 9:00 a.m. to 5:00 p.m., Monday through Friday) is SA-15, Suite 3100, 1800 N. Kent Street, Rosslyn, VA. FAX: 703-875-5177, TEL. 703-875-5175.

Copies of the appeal, plus all attachments, must be furnished at the same time to the agency and to AFSA, except as stated below.

What to File

When an appeal is submitted to the Board, the submission must explain the nature of the grievance and the remedy sought. It should also state the reasons the agency decision is considered erroneous, and should include supporting evidence and arguments. In addition, the submission must include: (1) a copy of the original grievance filed with the agency; (2) a copy of all documentation furnished to the agency during the original grievance process; and (3) a copy of the agency decision, if any. There is no required format, but a submission must be in writing. A letter or memorandum will suffice. If the appeal is submitted to the Board by email, the attachments must be included with the email, or submitted to the Board within 10 days of the submission of the appeal (unless an extension of that time period is obtained pursuant to the provisions on Extensions of Deadlines, below.) An employee should state whether or not the initial filing will be supplemented with additional evidence or argument(s). See section below on Grievant's Supplemental Submission. If no supplemental submission is expected, the case can be handled on an expedited basis.

The employee should ensure that any Personally Identifiable Information (PII) has been redacted from the documents submitted to the Board. The most common examples of such information in the grievance process are social security numbers (often found in older Employee Evaluation Reports (EERs)); the employee's date of birth; medical records; and criminal records. If any records considered to be PII are deemed by the employee to be essential to the grievance appeal, s/he should contact the Board Executive Secretary at the time of submitting an appeal, or supplementary documentation, in order to reach an agreement on how such material will be handled.

The Foreign Service Grievance Board is an adjudicatory body that ensures the fullest measure of due process for the members of the Foreign Service. While the Board has the authority to obtain all relevant official records, it does not conduct investigations. The decisions of the Board are based on the evidentiary record of documents submitted by the grievant and the agency.

Inquiries Regarding the Procedures for the Filing of an Appeal

Inquiries may be made by email, letter, or memorandum addressed to the Board, or by telephone. After a grievance appeal has been filed, the Board will routinely send to the employee additional information regarding the processing of the grievance appeal.

After Filing the Appeal

Any party in a case before the Board may obtain certain information relevant to the case in the possession of another party by submitting discovery requests to that party. For procedures governing discovery, see section below on Discovery.

If an employee wishes to supplement the initial submission with additional evidence or argument(s), a supplemental submission must be transmitted to the Board within 30 days of the filing date, or, if discovery is sought, within 30 days of receipt of the agency's response(s) to the

discovery requests.

Settlement/Mediation

At every stage of the grievance appeal, the Board encourages the parties to consider and engage in voluntary efforts to settle the case. The filing and pendency of an appeal with the Board should not inhibit the parties' efforts to settle any or all of the issues in the case. The parties may also request assistance from the Board with mediation. At the joint request of the parties, the Board will appoint one of its members, who is not a panel member on the case, to serve as the mediator. The assigned mediator will engage in confidential discussions with the parties in an effort to facilitate a settlement. Any statement made during the mediation may not be included or referred to in the Record of Proceedings (ROP) or shared with the panel members assigned to the case.

Mediation is made available to the parties without cost to them. The Board urges the parties to consider that in many cases mediation leads to quicker, more comprehensive resolutions, with less expense and results that are more tailored to their needs than what could be achieved from the adjudicative procedures. Unless otherwise ordered by the Board, all applicable deadlines will be suspended during the pendency of mediation, except for any dates scheduled for hearings or pre hearing conferences.

GRIEVANCE TIME GUIDELINES

Calculating Time Periods

"Days" mean calendar days unless otherwise indicated. In computing any period of time prescribed by these policies, the day of the act from which the designated period of time begins to run shall not be included. For example, if a party receives a motion on April 1st, the 15-day deadline for filing an opposition would begin on April 2nd. The last day of a time period shall be counted. If the due date falls on a Saturday, Sunday or Federal holiday, the next business day will be considered the due date. All submissions must be filed with the Board by 5:00 p.m. Eastern time on the due date.

Grievant's Supplemental Submission

A grievant who wishes to supplement the initial filing with additional evidence or argument shall file a supplemental submission not later than 30 calendar days after filing the grievance or the receipt of discovery responses. Grievants who do not plan to supplement their cases should so advise the Board in their initial filing or as soon as possible thereafter so as to avoid unnecessary delay.

If the agency indicates that it intends to issue an agency-level decision, it should make best efforts to do so within 30 days of the grievance appeal. If despite such best efforts it is unable to issue the decision within that time period, it may request suspension of deadlines for an appropriate period of time. Within 20 days of the issuance of the agency decision, the grievant may take additional discovery to the extent the Agency's decision raises new matters that may not have been reasonably contemplated by the grievant when the initial discovery requests were made. The timeline for filing the supplemental submission will be tolled until 30 days after

discovery responses have been received.

Agency Response to Grievance Appeal or Supplemental Submission

If the agency wishes to file a response to a supplemental submission, it shall do so not later than 30 days after receipt of the supplemental submission or 30 days after completion of its discovery. If a grievant advises that he or she does not intend to supplement the initial filing, the agency's response to the grievance appeal shall be submitted within 30 days of receipt of that notice.

If the agency does not intend to respond to the grievance or the supplemental submission, it should so inform the Board immediately and the record of proceedings will be closed.

Rebuttal

If a grievant wishes to reply to the agency's response to the grievance appeal/supplemental submission, a rebuttal submission shall be filed not later than 15 days after receipt of the agency's response. If a grievant does not choose to file a rebuttal, he or she should notify the Board immediately and the record of proceedings will be closed.

In cases where the agency has not earlier reached a final decision in the agency-level-grievance and its response to the grievance appeal is its first statement of its position on the issues, within 20 days of the filing of the agency response, the grievant may take additional discovery to the extent the response raises new matters that may not have been reasonably contemplated by the grievant when the initial discovery requests were made. The timeline for filing the Rebuttal will be tolled until 30 days after discovery responses have been received.

Unless good cause is shown to the Board, the rebuttal will be the final submission. A motion seeking to establish good cause for filing a sur-reply, must be filed within seven days of the filing of the Rebuttal.

Jurisdiction

If the agency believes that the Board lacks jurisdiction over the issue(s) presented because:

- 1) the matter does not meet the definition of a grievance,
- 2) the grievance is filed by an individual who is not entitled to file,
- 3) the grievant has failed to exhaust administrative remedies, or
- 4) the appeal is precluded by the grievant's election of other remedies,

The agency may contest jurisdiction of some or all of the claims contained in the grievance by filing a Motion to Dismiss or a Request for Preliminary Determination [of Jurisdiction]. In connection with such a Motion or Request, including the filing of an Opposition or Rebuttal, the parties must adhere to the procedures set forth below in the section on Motions. While the Board is considering the issue of jurisdiction, the regular timelines will be tolled, unless otherwise ordered by the Board.

The Board may on its own initiative address or raise jurisdictional issues at any time.

If upon review of a Motion to Dismiss or a Request for Preliminary Determination, the Board

determines that it has jurisdiction over some or all of the claims, the grievant will have 30 days from receipt of the Board's ruling to initiate discovery or file any supplemental submission.

Timeliness

If the agency believes that the grievance is untimely, it may contest timeliness by raising the issue as an affirmative defense to the claims in the grievance appeal or by filing a Motion to Dismiss the untimely claims within 15 days of receipt of the initial filing. In connection with such a Motion (including the filing of any Opposition or Rebuttal), the parties must adhere to the procedures set forth in the section on Motions below. If the Board finds that the grievance is timely, the grievant will have 30 days from receipt of the Board's ruling to initiate discovery or file any supplemental submission.

Interim Relief

Board authority to stay agency action is limited to cases of involuntary separation, discipline, and recovery of alleged overpayment of salary, expenses or allowances. If the grievant wishes the Board to continue without interruption the suspension of the agency action, a request for interim relief must be filed within 15 days of the agency decision along with a notice of appeal to the Board and a copy of the appeal filed with the agency and the agency's decision. The grievant may complete the filing of the appeal with the Board within the usual time period, i.e., 60 days from the grievant's receipt of the agency level decision. .

If a final agency decision is issued after the grievance appeal is filed with the Board, a request for interim relief must be filed within 10 days of grievant's receipt of the decision. If the agency has no objection to interim relief during the pendency of the grievance appeal, it should so advise the Board immediately. If an agency contests the request for interim relief, it must submit its position in writing within 5 days of receipt of the grievant's request, unless otherwise directed by the Board. The grievant may respond within 5 days of receipt of the agency's objection. (The 5-day periods referred to in this paragraph exclude weekend days and federal holidays.)

In involuntary separation cases, if a need for interim relief arises some time after a grievance is filed with the Board, a request to stay the separation may be filed. Such a request should be filed as far in advance of the scheduled separation date as possible.

Discovery

For the timelines and other information pertaining to discovery, see section on Discovery, below.

Hearings

A hearing will be held if the grievant requests one in any case involving disciplinary action, separation based on the expiration of the grievant's time in class, or based on the grievant's relative performance. A hearing is required in a case involving recommendations for separation under Section 610 of the Foreign Service Act, unless the charged employee waives his right to a hearing. In all other cases, the Board may, upon the request of the grievant and after briefing by the parties, order a hearing or oral argument if it decides that the matter can best be resolved by either means.

If a grievant desires a hearing, he or she should notify the Board within 15 days of the initial filing. In cases in which grievant does not have a right to a hearing, the agency shall file a response within 15 days from receipt of the request either agreeing to the hearing request or filing an opposition to the request.

The Board will schedule a pre-hearing conference as soon as practicable after it is determined that there will be a hearing in the case. At such pre-hearing conference, the Board may, at the request of a party or *sua sponte*, establish a timetable for discovery and other proceedings in the case and address any or all of the matters listed in 22 C.F.R. 906.5. If deemed desirable, the Board may schedule one or more additional pre-hearing conferences at any time during the pendency of the case.

Extension of Deadlines

During the pendency of the grievance appeal, each party may, without seeking prior Board approval, notify the Board that the parties have consented to extend the deadline for a filing, provided that:

- 1) the extension does not exceed 14 days;
- 2) the extension does not apply to or affect the date of a scheduled hearing or pre hearing conference; and
- 3) there may only be one such consent extension for any particular filing.

The party who wishes to extend the deadline must first obtain consent from the other parties in the case and shall advise the Board of their agreement to extend the deadline and of the new filing date agreed upon.

In addition to consent extensions of deadlines, any party may request an extension of any time limit for good cause shown. Circumstances such as location overseas of the grievant, witnesses, or documents, or the complexity of issues may prevent adherence to some of the time limits. A party anticipating a problem in meeting a deadline should file the motion for an extension as soon as possible, but no later than three days before the deadline, absent exigent circumstances. Last-minute requests for extensions of time should be avoided. For additional information regarding requests for extension of deadlines, see discussion of Motions for Extension of Deadlines in the section on Motions, below.

A party may orally request an extension of time only during a telephonic conference call or a hearing with the other parties and the Board panel. The panel may grant or deny the request orally, or request that the party seeking the extension file a written request.

Any objections to a request for an extension of time must be made to the Board within three days (excluding weekend days and holidays) of receipt of the request. If a party has no objection to a request for an extension, the lack of such an objection should be made known to the Board without delay (unless the lack of objection is indicated in the request).

Requests for extensions of time for less than 10 days may, in the discretion of the Board, be granted for good cause without waiting for the views of the non-requesting parties.

A request to postpone a scheduled hearing will be granted only in exceptional circumstances.

As appropriate, the Board may establish an individualized filing schedule, taking into account the special circumstances of a case. In the absence of approval for a requested change, the deadlines herein will apply. In all cases the Board expects that delays by grievant and the agency be kept to a minimum.

Closing of the Record

Unless otherwise directed by the Board in non-hearing cases, the Record of Proceedings will be closed within five days of the last filing. In hearing cases, the deadline for final submissions will be fixed by the presiding member at the close of the hearing.

Policy on Issuance of the Decision

The Board endeavors to move cases as expeditiously as possible to final decision. The Board's policy is to issue its decision within 90 days of the date that the Record of Proceedings is closed, except that in separation cases, the policy is to issue the decision within 60 days of the date the record is closed.

DISCOVERY

This section provides general information about discovery procedures in cases before the Foreign Service Grievance Board. It should be read in conjunction with Chapter 11 of the Foreign Service Act of 1980, as amended, as well as the Grievance Board's policy statement entitled "Grievance Time Guidelines" (see above) and Board regulations found in 22 CFR 901-911.

GENERAL

A party's assertions of facts in its submissions may constitute one form of evidence, but these assertions are strengthened when substantiated and corroborated by other evidence. This additional evidence may include memoranda, letters, e-mails, performance evaluations, statements of witnesses, such as other employees, doctors, etc., as well as admissions or stipulations by parties to the grievance proceeding. If such information is not readily available through informal inquiry, parties may seek to obtain relevant evidence through the formal mechanisms of Discovery. The parties may also submit as evidence copies of relevant materials in the grievance file maintained by the agency. The Board may direct that documents be included in the Record of Proceedings of the grievance and will also consider pertinent laws and regulations, whether or not cited by the parties.

Discovery is the process that the parties may use to obtain relevant documents or other information in the possession or control of another party. Discovery is initiated when a party submits written requests of the other. These requests may be:

- to provide copies of documents and or make them available for inspection and/or copying (Requests for Production of Documents),
- to respond to written questions (Interrogatories),
- to admit to certain facts or circumstances (Admissions), or

- to produce witnesses for oral recorded testimony under oath (Depositions).

Initial discovery requests by either party must be comprehensive, seeking all relevant information then reasonably discoverable.

A party may be willing to admit or agree to a proposed statement of relevant facts, which may obviate the need to pursue other forms of discovery and expedite the resolution of the grievance. The interests of justice are well served when parties voluntarily disclose to each other all requested relevant information and material in their possession that may affect the outcome of the grievance. Employees may also have routine rights of inspection of certain agency personnel files (e.g., their agency-level grievance files). See 3 FAM 4426. Exercise of such rights may reduce or eliminate the need to resort to formal discovery procedures.

In general, only non-privileged information that is relevant and material to the issues presented in a grievance, or which may lead to discovery of relevant and material information, may be requested in discovery. Information and documents responsive to discovery requests may be withheld and objected to on various grounds, such as if they are covered by the Privacy Act of 1974 (5 U.S.C. 552a), Section 604 of the Foreign Service Act, national security concerns, certain privileges (such as the attorney-client privilege), and attorney work-product.

Discovery is most often accomplished without the involvement of the Grievance Board. Discovery requests and responses should not be filed with the Board. However, when a motion to compel is filed, the moving party is responsible for filing any discovery materials related to the issues in dispute.

These Discovery procedures do not supersede an employee's independent right to access information under the Freedom of Information Act and the Privacy Act. Access rights under those laws may be pursued without recourse to the Board.

TIME LIMITS

Grievant's Discovery and Responses

Within 20 days after the date of filing the grievance appeal, the grievant may submit discovery requests to the agency. Within 30 days after receipt of the discovery requests, the agency shall, with respect to each request, respond or file an objection or claim of privilege. An objection shall state the specific reasons why the requested information cannot or should not be furnished.

Follow-on Discovery

If the initial responses to discovery are incomplete, ambiguous, or contradictory, or raise new issues that could not have been anticipated previously, the party submitting these discovery requests may submit follow-on discovery requests - but only to the extent necessary to address the incomplete, ambiguous or contradictory responses or the new issues - within ten days of receipt of such responses.

Agency Discovery and Responses

Within 30 days of receipt of all discovery responses from the agency (including responses to follow-on interrogatories), the grievant must either file a supplemental statement or advise the Board in writing that no supplemental statement will be filed. Within 20 days after the filing of the

supplemental statement or the notice that no such statement will be filed, the agency may then submit its discovery requests to the grievant. Within 30 days after receipt of the agency discovery requests, the grievant shall respond to each request, or file an objection or claim of privilege.

Late-filed Agency Decision

If the agency has not reached a final decision in the agency-level grievance when the grievance appeal is filed, but during the pendency of the grievance it issues a decision or a response to the grievance or supplemental submission that represents its first statement of position on the matter, grievant may file additional discovery requests related to any new issues or matters raised in the decision or response within 20 days of receipt of such decision or response.

FORMS OF DISCOVERY:

Interrogatories

Interrogatories are questions submitted to a party. A grievant may ask interrogatories of named employees of an agency, but shall direct the interrogatories to the agency, which shall be responsible for obtaining responses from the named employees and providing the responses to the grievant. (Grievants may also seek voluntary statements directly from agency employees or any other persons, independent of the discovery process.)

Absent good cause shown, a party shall not be required to respond to more than 30 interrogatories (or more than 20 follow-on interrogatories), including all discrete sub-parts. A responding party who believes that the number of allowable interrogatories has been exceeded must advise the Board of an objection to the number of interrogatories within ten days of receiving them, or the objection shall be deemed waived. If a response cannot be given within the required time period, the responding party may seek an extension of the deadlines under the procedures set forth in these rules.

In filing such objection, the responding party must first confer with the proponent of the interrogatories in an effort to resolve informally the issue of the number of requests (which may include an agreement on the number of and/or which interrogatories will be answered). If the parties are unsuccessful in resolving the issue, the responding party may notify the Board of its objection to the number of interrogatories by email and advise the Board of the conference with the opposing party and the date(s). The Board will endeavor to resolve the issue expeditiously and will memorialize its decision in the Record of Proceedings.

If an objection or claim of privilege has been filed by the recipient to interrogatories, the requesting party may file a motion to compel further responses (see MOTIONS TO COMPEL AND RESPONSES below) and may await resolution of the motion to compel before filing follow-on discovery.

Production of Documents

A party may be asked to produce for inspection documents in its possession or control, to provide copies of such documents, and/or to make them available for copying. In all grievances in which the Board determines that it has jurisdiction, a grievant shall, upon request to the agency, have a right to access and inspect all non-privileged material in his agency-level grievance file maintained by the agency. Where a grievant lacks a timely opportunity to exercise this right of access, e.g., by reason of distance from Washington, the agency shall, upon request, provide him with copies of all non-privileged material in his grievance file.

Admissions or Stipulations

A request that a party admit to one or more facts, circumstances or propositions may help narrow the issues in dispute and reduce or eliminate the need for additional discovery. Requests for admissions must be filed at the same time as other discovery requests and may be similar to interrogatories that address the same facts and circumstances. The requesting party may indicate that admissions or stipulations to undisputed facts will obviate the need to respond to related interrogatories. A party should not request that the other party admit to clearly contentious or debatable propositions, or to the subjective opinions of the requesting party.

Depositions

Ordinarily, most relevant information may be obtained from a party through interrogatories and requests for documents and admissions. However, a party may also be asked to respond under oath to questions, or to produce witnesses under its control, supervision or responsibility. Answers will be recorded. A notice to take a deposition shall identify the person to be deposed and the date, time, medium and place of the deposition. The parties should consider whether it is feasible and cost-effective to conduct depositions through video or teleconferences.

Deponents may decline to answer specific questions that seek privileged information, national security information, or information covered by the Privacy Act or section 604 of the Foreign Service Act, or information that is patently irrelevant and sought only for improper purposes. The reasons for declining to respond shall be stated by the objecting party with specificity.

Otherwise, the deponent shall answer all questions, noting any objections on the record, which will be resolved later by the Board. If the party taking the deposition disagrees with the deponent's refusal to answer a question, that party may seek the Board's immediate intervention to resolve a dispute arising during the course of the testimony of a witness. The Board will attempt to resolve the dispute without requiring the submission of a Motion to Compel and will issue an oral order that will be memorialized in the Record of Proceedings. If the panel chair is unavailable to resolve deposition disputes, the requesting party may file a Motion to Compel responses with the Board.

Motions to Compel and Responses

Objections to discovery requests shall be communicated to the requesting party in writing. The reasons for declining to respond to a request shall be stated by the objecting party with specificity. If one party cannot file a complete discovery response within the requisite timeframe, it shall file a partial response, provided that it inform the Board and the opposing party as to when it anticipates a complete filing will be made and request an extension of time to complete the filing.

If a response to a request for discovery is not provided, is incomplete, or raises an objection, the requesting party may file a Motion to Compel the response, which is a request that the Board review the parties' positions concerning the information sought to be discovered and determine whether and to what extent the recipient of the request must respond.

Filing and resolving a motion to compel discovery tends to cause substantial delays in the processing of grievances. Discovery disputes are most often best resolved by means of direct discussions among the parties without Board involvement. Accordingly, the Board requires that

before a Motion to Compel may be filed, the requesting party must first endeavor to resolve or at least narrow the dispute informally with the other party. The requesting party must, within seven days of receiving the response/objections to discovery at issue, initiate such a discussion, and such discussion must occur within seven days thereafter. The parties may mutually agree to conduct additional conferences on the potential dispute, so long as they continue to confer in good faith and complete all such discussions within 30 days of the date on which the discovery responses/ objections were submitted. (The conference need not be in person.) The motion to compel shall certify that such a conference occurred and the date(s) of the conference(s), and must be filed with the Board within 15 days of the completion of the parties conference(s).

The motion to compel must identify each discovery request in dispute, the responses and/or objections to such requests given by the opposing party and an explanation of why the information sought is relevant and/or why the objections should be overruled. Motions to Compel must be prepared utilizing the template provided by the Board to the parties.

The non-moving party may respond to the Motion to Compel by supplementing its responses to the discovery requests at issue and/or by filing an opposition to the motion, explaining why the moving party is not entitled to the discovery. Any such opposition must be filed within 15 days of receipt of the Motion to Compel. If the responding party files supplemental responses, the requesting party must advise the Board within 10 days whether the additional information resolves the pending motion to compel.

If the Board rules that the information should be furnished to the requesting party, the response is to be made within 20 days of receipt of the ruling unless otherwise directed by the Board.

The Board may at any time (either before or after a Motion to Compel Discovery has been filed), on its own initiative or upon the request of a party, conduct a discovery conference with the parties for the purpose of addressing discovery disputes or potential discovery disputes.

In disposing of a grievance, the Board may take into account the failure or refusal of a party to disclose information after being directed to do so by an order of the Board and may view the evidentiary issues in dispute in a light most favorable to the requesting party.

MOTIONS

A motion is a request by a party, asking the Board to take particular action. The following procedures and time limits apply to all motions, except as otherwise provided.

Filing Motions

A motion must ordinarily be in writing and state the grounds supporting it and the relief sought. The motion should be a separate document, preferably in a Microsoft Word or Adobe (pdf) format. The moving party should attach to the motion copies of any documents that provide support for the relief sought. If the relevant document(s) have already been submitted, the party may cite to them without resubmitting them. The moving party must file the original motion with the Board and serve a copy with attachments on all parties and the exclusive representative.¹ The motion may be transmitted by mail, courier, as an attachment to an e-mail

¹ See 22 CFR Section 903.5. If there is a designation of a private representative other than the exclusive

or facsimile, or by commercial or personal delivery. However, motions for extensions of time, and responses thereto, may be filed by means of an informal e-mail request.

The Board may consider an appropriate oral motion if made during a status or pre-hearing conference or during the course of a hearing; however, the Board may request written submissions before ruling on the motion.

Opposition to Motions

Unless otherwise provided in these rules, any opposition to a motion must be filed with the Board within 15 days of receipt of the motion. The format of the opposition and means of filing shall be the same as set forth above for the motion.

Rebuttals

A rebuttal is a written submission that addresses issues raised in the opposition. (It should not repeat arguments made in the original motion.) If a movant wishes to file a rebuttal, it must be filed with the Board within 10 days from receipt of the opposition. The format of the rebuttal and means of filing shall be the same as set forth above for the motion.

Additional Filings

No additional documents pertaining to the motion, including sur-replies, shall be filed by either party without express permission of the Board.

Motion for Extension of Time

The Board may extend any time limits for good cause shown. Parties who anticipate problems in meeting deadlines should file a motion to extend the deadlines as soon as possible, but not later than three days before the deadline, absent exigent circumstances. Each party may notify the Board of a consent extension of deadlines under circumstances identified in the section on Extension of Deadlines, above. A motion to extend time should include a statement of the reason(s) for the extension request, a proposed alternative date and whether the opposing party objects to the request. An objection to the request for an extension must be filed within two days of receipt of the motion and must state the reason(s) for the objection.

Motion for Permission to Submit a Late Filing

When a party has missed a filing deadline, any late submission must be accompanied by a Motion for Permission to Submit a Late Filing. The motion must include the reason(s) for missing the filing deadline and a statement whether the opposing party objects to the late filing. The Board will accept a late submission only upon a finding of good cause.

Dispositive Motions²

representative, service on the private representative is sufficient.

² A “dispositive motion” seeks to dispose of one or more claims entirely without the need for further proceedings such as a Motion to Dismiss.

Subject Matter Jurisdiction:

If an agency believes that the grievance appeal presents subject matters that the Board does not have the authority to consider, the agency may contest the Board's jurisdiction by filing a Motion to Dismiss at any time prior to the issuance of the Board's decision.

The grievant will have 15 days to file any opposition to the motion. The Board may make a preliminary determination of its jurisdiction or defer the ruling until later in the proceedings.

Other determinations:

A party may file a motion concerning the timeliness of a grievance appeal, the election of other remedies under 22 CFR Section 904.3, or any other issue the resolution of which might avoid the necessity of further proceedings. Motions concerning the timeliness of a grievance or the election of remedies must be filed within 15 days of receipt of the grievance appeal.³ The grievant will have 15 days to file an opposition to the motion.

Motion to Compel Discovery

See Objections/Motion to Compel subsection, under the Discovery section, above.

Motion for Reconsideration

Under Section 1106(9) of the Foreign Service Act, 22 U.S.C. 4236(9) and 22 CFR 910.1, the Board may reconsider any decision upon presentation of newly discovered or previously unavailable material evidence. Under expansive court interpretation of the statutory and regulatory standards, a motion to reconsider may be based on (1) an intervening change in controlling law, (2) the availability of new evidence, or (3) the need to correct clear error or prevent manifest injustice. A motion to reconsider must be filed within a reasonable period of time.

Requests for Attorney's Fees

Requests for attorney's fees, accompanied by supporting documentation, must be filed with the Board within thirty (30) days of the Board's decision. The agency may file an opposition or response to the motion within 30 days of its filing and the grievant or charged party may file a rebuttal within 10 days of the filing of such opposition or response.

³ For the purpose of this provision, "receipt" means receipt of the grievance appeal, including attachments.