

CAREER SERVICE REVIEW OFFICE

FY 2020 ANNUAL REPORT

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Akiko Kawamura was appointed in 2012 to lead the CSRO. She is a graduate of the University of Utah S.J. Quinney College of Law, with a background in employment law and human resource policy.

Annette Morgan has served at the CSRO since 2010. She is a graduate of Utah Valley State College (AAS, Legal Assisting), with a background in civil litigation.

MISSION STATEMENT

The Career Service Review Office administers the Utah State Employees' Grievance and Appeals Procedures for executive branch employees set forth at *Utah Code* §§ 67-19a-101 through 501.

OVERVIEW

The Career Service Review Office (CSRO) is an independent State entity. It is an administrative court for State employees, providing due process to executive branch employees who have been dismissed, disciplined, or subject to other agency employment actions.

Under its governing statute, the CSRO may review a grievance from a career service employee regarding: a dismissal; demotion; suspension; reduction in force; abandonment of position dispute; a wage grievance (if an employee is not placed within the salary range of the employee's current position); a violation of a rule adopted by the Department of Human Resource Management; and the equitable administration of certain benefits. The CSRO can review these disciplinary actions and, following a full evidentiary hearing, uphold or overturn the State action.

Under *Cleveland v. Loudermill*, a case decided by the United States Supreme Court in 1985, governmental employees who have a property interest in their job are entitled to due process when that property interest is challenged. Under Utah statutes, some State employees are granted career service status. A career service employee has a property interest in their job and, under *Loudermill*, is entitled to some form of hearing when the State takes certain employment actions. The CSRO provides that hearing.

In 2013, the Legislature amended the CSRO's governing statute to allow all executive branch employees to file grievances under the *Utah Protection of Public Employees Act*. This statute protects employees who are "whistleblowers." Traditionally, only the courts had jurisdiction over whistleblower claims. However, since 2013, the CSRO has also served as the final administrative body to review a grievance of retaliatory action in violation of *Utah Code* § 67-21-3. And as of 2018,

executive branch employees may request a review a CSRO review of the findings of an abusive conduct investigation conducted under *Utah Code* § 67-19-44.

The State of Utah has approximately 22,000 employees. Of those employees, approximately 2/3 have career service status and are eligible to file a grievance with the CSRO when they are subjected to one of the qualified employment actions. Under the 2013 and 2018 amendments, all 22,000 employees are eligible to file either whistleblower grievances or requests for review of an abusive conduct investigation.

The CSRO has 2 full time employees who manage its caseload and steer grievances to an appropriate resolution. When grievances result in an evidentiary hearing (at Level 4 of the State's grievance procedures), they are conducted by either the Administrator or by one of the CSRO's contract hearing officers.*

By statute, the CSRO has established deadlines, which also serve as performance goals. By consistently meeting these goals, the CSRO discharges its duties cost effectively and efficiently, while simultaneously ensuring that employee grievances are resolved in a fair and independent forum.

*Hearing officer contracts are awarded to attorneys through the bid process governed by the Division of Purchasing.

INDEPENDENCE

The CSRO is an independent administrative entity. Its independence is important to both employees and agencies. Under *Loudermill*, the law requires that post disciplinary due process is provided by an impartial tribunal. The CSRO is that impartial forum. In addition, as a quasi-judicial agency, the CSRO serves to check and balance executive branch agencies. The executive branch agencies have authority over day-to-day employee discipline, but the CSRO has authority to confirm that those actions are in accordance with the law.

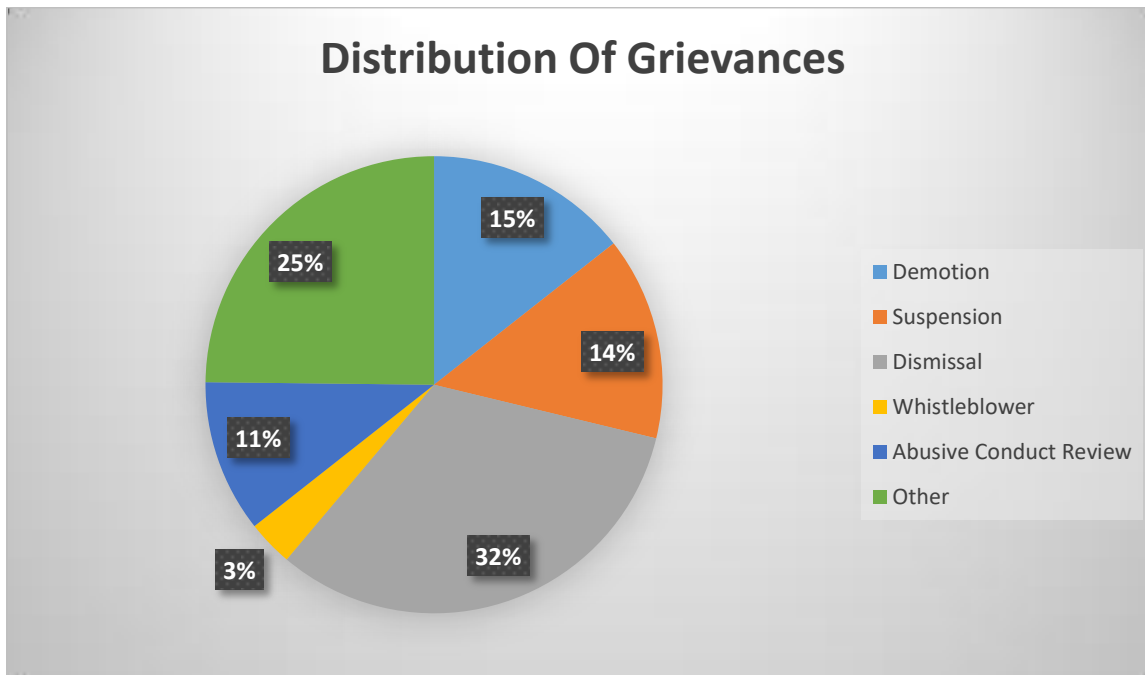
CSRO DUTIES

On a day to day basis, the CSRO's duties are: solicit and maintain hearing officer contracts under the rules adopted by the Division of Purchasing; train and oversee hearing officers as directed by the Department of Human Resource Management; assign hearing officers to grievances on a rotating basis; intake and review grievances; issue dismissals for lack of jurisdiction; conduct pre-hearing conferences; prepare and issue scheduling orders; schedule and conduct mediations; prepare and issue and enforce subpoenas; guide parties through procedural rules; oversee and conduct hearings on motions and discovery disputes; record, oversee and conduct Level 4 evidentiary hearings; issue Level 4 decisions; hire court reporters for appeals; prepare records on appeal; maintain files; update, review and maintain CSRO rules; respond to GRAMA requests; enforce CSRO rules

DISTRIBUTION OF GRIEVANCES

The CSRO counts its cases on a rolling 18 month basis, including grievances that have not reached the CSRO (Level 4 of the grievance procedures) and cases that are on appeal. The CSRO’s caseload averages 100 cases.

Under the CSRO rules, there only three “disciplinary” actions designated by statute: demotion, dismissal, and suspension. No other issues qualify as “disciplinary.” The distribution of closed grievances (by percentage) for FY2020 was:



* “Other” includes, but is not limited to: written reprimand, harassment, written warning, working conditions, work schedule, performance, interview process, career mobility and involuntary transfer.

JUDICIAL REVIEW FY 2020

One CSRO decision was appealed to the Utah Court of Appeals and upheld: *S.O. v. Career Service Review Office and Dep’t of Environmental Quality*

RESOLUTION OF GRIEVANCES

Some employee grievances are never reported to the CSRO. Of those reported, in FY20: 57% of grievances were dismissed for lack of jurisdiction; 7% of grievances resulted in a Level 4 evidentiary hearing; 70% of grievances were scheduled for a hearing; and 57% of cases were resolved prior to the hearing.

The CSRO has increased its efforts to help parties resolve grievances by encouraging participation in mediation. As a result, the number of grievances filed and the average number of hearings has trended down.

PERFORMANCE MEASURES

Traditional performance metrics are difficult to apply to the CSRO but the office must meet statutory time limits. The CSRO has tracked performance by converting statutory time limits to output and efficiency measures.

By statute, the CSRO shall issue a written decision within 20 working days after an evidentiary hearing is adjourned. *Utah Code* § 67-19a-406(3)(a). In FY20, the average number of days between the end of an evidentiary hearing and the issuance of a written decision was 20 days.

The CSRO shall issue a jurisdictional decision within 15 days of the date a new grievance is filed. *Utah Code* § 67-19a-403(3)(b). In FY 20, the average number of days between the date a grievance was filed and the issuance of a written jurisdictional was 9 days.

In the absence of extraordinary circumstances warranting extension, the CSRO shall conduct an evidentiary hearing within 150 days of the date jurisdiction is established. *Utah Code* § 67-19a-404(1)(b)(ii)(B). In FY20, the average number of days between the date establishing jurisdiction and the beginning of a scheduled evidentiary hearing was 138 days.

The CSRO shall hire and retain hearing officers who meet the performance standards for Administrative Law Judges set by the Utah Department of Human Resource Management. In FY20, the CSRO's met established performance standards established by the Department of Human Resource Management.