

## 3.905-1 Remedies.

(a) *Agency response to Inspector General report.* Not later than 30 days after receiving a report pursuant to 3.904-2, the *head of the agency shall—*

(1) Determine whether sufficient basis exists to conclude that the contractor or *subcontractor* has subjected the employee who submitted the complaint to a reprisal as prohibited by 3.903; and

(2) Either issue an order denying relief or take one or more of the following actions:

(i) Order the contractor or *subcontractor* to take affirmative action to abate the reprisal.

(ii) Order the contractor or *subcontractor* to reinstate the complainant employee to the position that the person held before the reprisal, together with compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(iii) Order the contractor or *subcontractor* to pay the complainant employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the *head of the agency*.

(iv) Consider disciplinary or corrective action against any official of the *executive agency*, if appropriate.

(b) *Complainant's right to go to court.*

(1) Paragraph (b)(2) of this section applies if—

(i) The *head of the agency* issues an order denying relief; or

(ii)

(A) The *head of the agency* has not issued an order—

(1) Within 210 days after the submission of the complaint; or

(2) Within 30 days after the expiration of an extension of time granted in accordance with 41 U.S.C. 4712(b)(2)(B) for the submission of the report to those stated in 3.904-2(b); and

(B) There is no showing that such delay is due to the bad faith of the complainant.

(2) If the conditions in either paragraph (b)(1)(i) or (ii) of this section are met—

(i) The complainant *shall* be deemed to have exhausted all administrative remedies with respect to the complaint; and

(ii) The complainant *may* bring a de novo action at law or equity against the contractor or *subcontractor* to seek compensatory damages and other relief available under 41 U.S.C. 4712 in the appropriate district court of the *United States*, which *shall* have jurisdiction over such an action

without regard to the amount in controversy.

(A) Such an action *shall*, at the request of either party to the action, be tried by the court with a jury.

(B) An action under this authority *may* not be brought more than 2 years after the date on which remedies are deemed to have been exhausted.

(c) *Admissibility in evidence.* An *Inspector General* determination and an *agency head* order denying relief under this section *shall* be admissible in evidence in any de novo action at law or equity brought pursuant to 41 U.S.C. 4712.

(d) *No waiver.* The rights and remedies provided for in 41 U.S.C. 4712 *may* not be waived by any agreement, policy, form, or condition of employment.

**Parent topic:** 3.905 Remedies and enforcement of orders.