

Kansas Administrative Regulations

Department of Corrections

Article 6.—Good Time Credits and Sentence Computation

44-6-130. Same; hearing procedure; written decision; service upon inmate or offender; effect of a denial of proposed action.

(a) Each hearing shall be conducted according to the following:

(1) The proposing staff member shall present a concise explanation, outlining the facts and law applicable to the proposed action that require a decrease in the pool of previously awarded good time credits in the opinion of the staff member. The proposing staff member may choose to stand upon that person's statement of reasons for the proposed adjustment set forth in the notice of proposed action in lieu of an oral statement. A copy of each document relied upon by the proposing staff member shall be submitted to the hearing officer. Cross-examination by the inmate or offender shall not be permitted, but the hearing officer may freely question the proposing staff member throughout the hearing, as deemed necessary, in order to discover the truth as to any disputed facts or to better understand legal propositions submitted by the staff member in support of the proposed action.

(2) The offender or inmate shall then be given an opportunity to present a response to the proposed action, which may consist of an oral statement of facts or applicable legal authorities, or both, statements from other witnesses who voluntarily appear at the hearing, or any documentary evidence, including affidavits from witnesses. The inmate or offender may also initially request that the hearing officer summon a witness or witness if submission of a written request for issuance of summons in advance of the hearing, as permitted by K.A.R. 44-6-129, was not practicable under the circumstances in the hearing officer's judgment. The hearing officer may require a proffer of the expected statement from any witness so requested and may deny the request if the proffered statement is deemed by the hearing officer to be one or more of the following:

(A) Irrelevant, immaterial, or otherwise unnecessary;

(B) repetitious of the statement of another witness or witnesses, not including that of the inmate or offender; or

(C) unduly risky to personal or facility safety.

If a proffered statement is denied, the hearing officer shall record each reason for denial in the hearing officer's written decision following the hearing. Cross-examination shall not be permitted, but the hearing officer may question the inmate or offender, or other witness presented, as deemed necessary by the hearing officer in order to discover the truth of any disputed facts or to better understand legal propositions submitted by the inmate or offender in opposition to the proposed action.

(3) Subject to approval of the hearing officer, the proposing staff member may present a brief rebuttal, which shall be limited to responding to new factual contentions or legal arguments in statements or documents presented by the inmate or offender.

(4) The hearing officer may hear statements by telephone. If statements are received by telephone, each statement shall be taken in such a manner that all individuals present can hear the statement simultaneously. The statement shall be otherwise subject to the same requirements for presentation and reception as those for in-person statements.

(5) The hearing officer may take notes of the statements and other evidence submitted. All statements shall be unsworn. If notes of statements are taken, the notes shall be preserved and attached to the hearing officer's written decision. If documentary evidence is considered, a copy of the evidence shall be attached to the decision, and the original shall be returned to the party offering the evidence.

(6)(A) Before or after the hearing, the hearing officer may freely consult all relevant classification and parole supervision records that pertain to the review or award period or periods specified in the notice of proposed action, including the following:

- (i) Chronological notes;
- (ii) police reports;
- (iii) correspondence;
- (iv) drug testing results;
- (v) program reviews;
- (vi) progress reports from treatment or program providers;

- (vii) discharge notes or reports;
- (viii) certificates of completion; and
- (ix) disciplinary reports and records of convictions.

The hearing officer may consult these records outside the presence of the inmate or offender.

(B) If the hearing officer intends to rely upon any record specified in (a)(6)(A) that has not already been served upon the inmate or offender in either upholding or modifying a proposed adjustment of an award of good time credits, the hearing officer shall make that intention known to the inmate or offender in writing and shall provide to the inmate or offender a copy of each record, which may be redacted if necessary to protect the safety and identity of a confidential informant or to protect victim information.

(7) The inmate or offender shall have five working days from date of the notification from the hearing officer to submit a written response, which the hearing officer shall receive and duly consider before making a final decision in the matter.

(8) The hearing officer shall not discuss with the counselor or officer the contents of any such records, or any piece of evidence received at the hearing, outside the presence of the inmate or offender.

(9) If the hearing officer during the course of review of relevant documentation discovers a factual basis for proposing that a greater amount of good time credit should be removed than was originally proposed, the hearing officer shall issue a second notice of proposed action setting forth each reason and attaching any relevant documents relied upon for that proposal, which shall be served upon the inmate or offender by the end of the next working day. If the inmate or offender requests a further hearing on the new notice of proposed action, a new hearing officer shall be designated, and the matter shall be processed as otherwise provided in these regulations.

(b) After the hearing is completed and any posthearing procedure as stated in paragraph (a) (6), (7) or (9) is also completed, the hearing officer shall proceed within five working days to write and issue a decision that upholds, modifies, or denies the proposed action. The decision shall be concisely written and shall express the hearing officer's findings of fact and reasoning for taking the action decided upon. While the hearing officer may discuss the various theories and contentions of the parties, it shall

not be necessary that a comprehensive or exhaustive opinion touching on all points of dispute be produced.

(c) The decision shall be served upon the inmate or offender within two working days after its issuance by the hearing officer. A written, dated receipt shall be obtained from the inmate or offender upon service of the decision.

(d) A decision to deny a proposed action shall not be subject to appeal, and the good time award record and associated release and sentence discharge dates shall be left unchanged.

(Authorized by and implementing K.S.A. 21-4722 and K.S.A. 2007 Supp. 75-5210; effective Aug. 8, 2008.)

***** Authenticated Kansas Administrative Regulation *****