

ATTACHMENT 5C5

MODIFIED FORM APPEAL DENIAL LETTER

RE: Case Caption
Case No.

Your appeal of the dismissal of the unfair labor practice charge in this case by the _____ Regional Director has been carefully considered.

Your appeal has been denied because the appeal has failed to establish that: (1) the Regional Director's decision did not consider material facts that would have resulted in issuance of complaint; (2) the Regional Director's decision is based on a finding of a material fact that is clearly erroneous; (3) the Regional Director's decision is based on an incorrect statement of the applicable rule of law; (4) there is no Authority precedent on the legal issue in the case; or (5) the manner in which the Region conducted the investigation has resulted in prejudicial error.

Examples of additional sentences which may be added:

"The new material you submitted with your appeal has not been reviewed since you have not established that the evidence either did not exist during the investigation or that you could not have reasonably known about the existence of the evidence."

"Contrary to the allegations you raise on appeal, the investigation was conducted consistent with the Office of the General Counsel's Quality Standards and Scope of Investigation criteria."

"It has been determined that your claim of bias on the part of the investigator is unfounded. The Appeals review establishes that you were treated fairly and equitably in accordance with the Office of the General Counsel's Quality Standards."

“In particular, the evidence establishes that the Agency had a legitimate reason for reassigning the employee and would have taken the same action in the absence of its consideration of the employee’s protected union activity.” Indian Health Service, Winslow Service Unit, Winslow, Arizona, 54 FLRA 126 (1998) (an employee was detailed to another position for a legitimate reason).

The appeal has established no ground for reversing the Regional Director’s decision or remanding the case for further investigation in accordance with section 2423.11(e) of the General Counsel’s’s regulations. The dismissal letter issued by the Regional Director constitutes the written statement of the reasons for not issuing a complaint as required by section 7118(a)(1) of the Statute. The Regional Director’s reasons for not issuing a complaint are hereby affirmed. Your appeal is denied and the case is closed.

For the General Counsel.

Sincerely,

Deputy General Counsel