

Cherokee Nation Code Annotated
Title 1: Administrative Procedure
Chapter 4: Adjudication
§ 416. Agency review of initial orders
Cite as: 1 CNCA § 416

A. An agency head, upon its own motion, may review an initial order. A party may appeal an initial order. Upon appeal by any party, the agency head shall review an agency order, except to the extent that:

1. a provision of law precludes or limits agency review of the initial order; or
2. the agency head, in the exercise of discretion conferred by a provision of law, declines to review the initial order.

B. An appeal from an initial order must be filed with the agency head, or with any person designated for this purpose by rule of the agency, within ten (10) days after the initial order is rendered. If the agency head on its own motion decides to review an initial order, the agency head shall give written notice of its intention to review the initial order within ten (10) days after it is rendered. The ten (10) day period for a party to file an appeal or for the agency head to give notice of its intention to review an initial order is tolled by the submission of a timely petition for reconsideration of the initial order pursuant to 1 CNCA § 415. A new ten (10) day period starts to run upon disposition of the petition for reconsideration. If an initial order is subject both to a timely petition for reconsideration and to a petition for appeal or to review by the agency head on its own motion, the petition for reconsideration must be disposed of first, unless the agency head determines that action on the petition for reconsideration has been unreasonably delayed.

C. An agency head that reviews an initial order shall exercise all the decision-making power that the agency head would have had if the agency head had conducted the hearing that produced the initial order, except to the extent that the issues subject to review are limited by a provision of law or by the agency head upon notice to all the parties. In reviewing findings of fact in initial orders by presiding officers, the agency head shall give due regard to the presiding officer's opportunity to observe the witnesses. The agency head shall personally consider the whole record or such portions of it as may be cited by the parties.

D. An agency head may render a final order disposing of the proceeding or may remand the matter for further proceedings with instructions to the presiding officer who rendered the initial order. Upon remanding a matter, the agency head may order such temporary relief as is authorized and appropriate.

E. A final order or an order remanding the matter for further proceedings under this section must identify any difference between this order and the initial order and shall state the facts of record which support any difference in findings of fact, state the source of law which supports any difference in legal conclusions, and state the policy reasons which support any difference in the exercise of discretion. A final order under this section must include, or incorporate by express reference to the initial order, all the matters required by 1 CNCA § 415(D). The agency head shall cause an order issued under this subsection to be delivered to the presiding officer and to all parties.

Historical Data

LA 13-07, eff. March 19, 2007.