

Administrative Law Examined: What Are The Advantages/Disadvantages Of Appealing A State Agency Decision?

A question I often get is whether an individual or business should appeal an adverse agency decision. This is a good question that deserves special consideration. If you are faced with a similar question, your answer will largely depend on your particular facts and circumstances. However, this article attempts to lay out the possible pros and cons of such an appeal.

Advantages of Appealing Agency Decision

1. **You Might Win** - Government officials make mistakes. Government employees have errors in judgment, they apply the Washington Administrative Code (also known as the Administrative Procedures Act or the APA) incorrectly, and they take action that is at times arbitrary and capricious. Initial administrative decisions contain findings of fact that are not based on substantial evidence and contain errors of law. Further, even if the State has hired an expert that agrees with the position taken by the State, that expert might very well be wrong. In other words, you might very well prevail if you appeal the agency action. Your case is important enough for an attorney experienced in administrative law to look at and evaluate whether an appeal would be beneficial to you.
2. **Reduce Impact of Adverse Agency Decision** - In my experience, a party that administratively appeals an adverse agency decision improves their position as a result of an appeal the majority of the time. There are normally three possible options at hearing: (1) the agency determination is affirmed on all grounds; (2) the agency decision is affirmed, with some modifications; or (3) the agency determination is denied. If the agency determination is either denied or modified, you have improved your position. Keep in mind that there are some cases the decision is more cut and dry: i.e. -you get to work with vulnerable adults or you don't. If that is the case, the agency may not be willing to negotiate as much.
3. **Increase Settlement Ability** - By simply appealing within the allotted time frame, a party can preserve their negotiating power with the agency. Most state agencies would prefer to settle rather than go to a hearing. If an agency's action is appealed, the state agency has an incentive to settle the action outside of the context of an administrative hearing. After all, an administrative hearing costs the agency money in preparing for the hearing, paying for their legal counsel, and paying for any needed expert witnesses, among other costs. State agencies will not want to pay for these legal costs unless it determines it has a really good case. The agency may have a weakness in their case that you are unaware of that makes the agency's willingness to settle all the greater. Without a formal appeal within the agency's stated timeline, the agency will not likely negotiate with you as it likely has every right to enforce its determination against you without an administrative process. By simply appealing the agency action, you increase your chances of obtaining a settlement that is far more beneficial to you than if no appeal was taken at all.
4. **Discovery I Public Records Request** - When you appeal, you are given the ability to find out more about the underlying basis for the agency's action. This could involve making the agency answer questions via interrogatories or produce documents via a request for production that simply asks the agency to explain its action against you. Another method you can use is to request certain documents via a public records request. Yet another option is to depose agency staff concerning the action it has taken against you. These "discovery" techniques will give you valuable information about your case and, at the very least, will aid in your evaluation of whether your case has merit or not. Some cases I have had have been decided due to information obtained during the discovery process. By simply appealing an action, you gain the right to find out more about your case.

5. Delay the Agency Action - Often times agency's will delay the action it is taking against you if the action is appealed. If the action involves the collection of money or a land-use action, this might be beneficial to you.

Disadvantages of Appealing Agency Action

1. You Might Lose - Despite a rigorous defense, there are times when the government's case is too strong to overcome.

2. Cost / Time - The cost and time involved in appealing the agency action can be high, whether it be your time involved, legal fees, expert fees, etc. Although you may be able to collect attorney's fees in an administrative action, you may not be able to do so until the action is appealed to superior court and beyond. Even then, you will only be able to collect if you prevailed at superior court and you will only be able to collect the attorney fees that were generated at the superior court level of review. In addition, there might be several levels of appeal of an agency action, which can add to the time and expense of appealing.

3. Difficult Legal Standard - In some administrative hearings, the burden of proof is on the person appealing the government or agency action. For example, in a recent land- use case I had, my client had to prove that the county's land use decision was clearly erroneous. In other administrative cases I have had, the person appealing had to show that the agency decision was in error by a preponderance of the evidence. However, in other administrative hearings, the burden of proof was on the agency. The burden will change depending on what action you are appealing, but it is certainly worth looking into as it should play a role in your decision of whether or not to appeal.

Conclusion

In most cases, I think one should appeal an agency action. Even if you feel you will not ultimately prevail in the appeal, an appeal may increase your ability to settle the matter with the agency on terms more favorable to you than if no appeal were taken. At the very least, I recommend having an attorney experienced in administrative law review your case and go over your options.

Administrative Law is among Stephen Manning's areas of emphasis. Prior to joining Bean, Gentry, Wheeler & Peternell in Olympia, Stephen served as an Assistant Attorney General for the Washington State Attorney General's Office. In that capacity, Stephen represented the Health Care Authority and DSHS in cases ranging from administrative hearings to disputes at the Washington State Court of Appeals.