

1. What is the U.S. Merit Systems Protection Board?

The U.S. Merit Systems Protection Board is an independent agency in the Executive branch of the Federal Government that serves as the guardian of Federal merit systems. The Board is composed of three members who are appointed by the President and confirmed by the Senate. They serve overlapping, non-renewable 7-year terms. The Board is bipartisan. No more than two of its three members may be from the same political party. The last button to the left will take you to the MSPB website where you can find a wealth of information about the MSPB.

2. Does the Board hear all types of Federal employee appeals?

No. The Board may hear appeals of federal agency actions only when it has been expressly authorized to do so by law, rule, or regulation. [5 U.S.C. § 7701\(a\)](#). A list of actions or decisions that are appealable to the Board, and the laws, rules, and regulations that authorize these appeals, can be found in the Board's regulation at [5 C.F.R. § 1201.3](#).

3. What kinds of actions may be appealed to the Board?

The majority of cases within the Board's jurisdiction are appeals of adverse actions: removals (termination of the employment relationship for cause), suspensions of more than 14 days, reductions in grade or pay, and furloughs of 30 days or less. Other types of actions that may be appealed to the Board include: performance-based removals or reductions in grade, denials of within-grade salary increases, reduction-in-force actions, final administrative actions or decisions affecting an individual's rights or interests under the Civil Service Retirement System or the Federal Employees' Retirement System, OPM employment practices, OPM suitability determinations or suitability determinations by other agencies when that authority has been delegated by OPM, denials of restoration or reemployment rights, and terminations of probationary employees under certain circumstances. See the Board's regulation at [5 C.F.R. § 1201.3](#) for a complete list of actions that are appealable to the Board. See question #19 for descriptions of some particular statutes that provide for appeals to the Board.

4. What can I do if I am affected by a personnel action that is not appealable to the Board?

- Some actions that are not appealable to the Board may be appealable to OPM or may be covered by agency grievance procedures.
- If you are a member of a bargaining unit, actions covered under a negotiated grievance procedure may be grieved in accordance with that procedure.
- If a personnel action (whether appealable to the Board or not) is taken or about to be taken as a result of a prohibited personnel practice, you may file a complaint with the Office of Special Counsel, asking the Special Counsel to seek corrective action from the Board on your behalf.

5. May all Federal employees file appeals with the Board?

No. The employees and others (e.g., applicants for employment, annuitants in retirement cases) who may appeal specific actions to the Board vary in accordance with the law and regulations governing those actions. In some cases, classes of employees, such as political appointees, are excluded. Employees of specific agencies are excluded with respect to certain actions.

6. Who may appeal an adverse action to the Board?

Employees who may appeal adverse actions (removals, suspensions of more than 14 days, reductions in grade or pay, and furloughs of 30 days or less) are:

- Employees in the competitive service who have completed a 1-year probationary or trial period;
- Veterans preference-eligible employees with at least one year of continuous employment in the same or similar positions outside the competitive service;

- Postal Service supervisors and managers, and Postal Service employees engaged in personnel work (other than those in nonconfidential clerical positions), who have completed one year of current continuous service in the same or similar positions; and
- Excepted service employees, other than preference-eligibles, who are not serving a probationary or trial period and who have completed two years of current continuous service in the same or similar positions in an Executive agency.

7. Do agencies have to advise employees of their right to appeal personnel actions to the Board?

When an agency issues a decision notice to an employee on a matter that is appealable to the Board, the agency must provide the employee with the following: (1) notice of the time limits for appealing to the Board, and the address of the appropriate Board office for filing the appeal; (2) a copy, or access to a copy, of the Board's regulations; (3) a copy of the Board's appeal form; and (d) notice of any right the employee has to file a grievance. [5 C.F.R. § 1201.21](#). However, the absence of a notice of appeal rights does not necessarily mean you have not been subjected to an action that is appealable to the Board.

8. Does the Board hear appeals from employees who are covered by a negotiated grievance procedure?

If an employee is a member of a bargaining unit that is represented by a union or an association, the bargaining agreement may have a negotiated grievance procedure available to the employee. Many times, the grievance procedure will cover personnel actions that by law may otherwise be appealed to the Board. If a bargaining unit employee is covered by such a "broad scope" grievance procedure, then the employee has a choice between filing either a grievance with the agency or an appeal with the Board, *but may not do both*. However, if the employee alleges discrimination in connection with the underlying personnel action, he or she may appeal the arbitrator's decision to the Board. See [5 U.S.C. § 7121\(d\)](#).

A preference eligible Postal Service employee can file both a grievance and a Board appeal from the same action, but does not have a right of Board review of an arbitration decision.

9. Does the Board hear complaints of discrimination in connection with personnel actions?

Generally, yes, if the personnel action can be appealed. See question 5. If an employee alleges discrimination in connection with most actions that are otherwise appealable to the Board, the Board has jurisdiction over the matter. Discrimination allegations that do not involve actions within the Board's jurisdiction may only be pursued through the employing agency and the Equal Employment Opportunity Commission (EEOC).

In IRA appeals, USERRA appeals, and VEOA appeals, where the underlying personnel action is not independently appealable to the Board, the Board lacks jurisdiction to decide claims of discrimination. See [5 C.F.R. § 1201.3\(a\)](#) for a list of actions that are independently appealable to the Board.

10. How do I file an appeal with the Board?

- You must file an appeal in writing with the regional or field office of the Board that has jurisdiction over the area where your duty station was located when the agency took the action. Appeals of Office of Personnel Management reconsideration decisions concerning retirement benefits, and appeals of adverse suitability determinations under 5 CFR part 731, must be filed with the regional or field office that has jurisdiction over the area where you live. See [5 C.F.R. § 1201.4\(d\)](#).
- An appeal must be filed within 30 calendar days of the effective date of the action, if any, or within 30 calendar days after the date of receipt of the agency's decision, whichever is later. If the 30th day falls on a Saturday, Sunday, or Federal holiday, the filing deadline is extended to the next working day.
- If you and the agency mutually agree *in writing* to submit your dispute to an alternative dispute resolution (ADR) process, the 30-day filing time limit is automatically extended to 60 days.
- Special statutory time limits apply to filing appeals under certain laws. See question #19.

- Appeals may be filed through this **e-Appeal** process, or by mail, by facsimile, by commercial overnight delivery, or by personal delivery. The date of filing by e-Appeal is the date of electronic submission. The date of filing by mail is considered to be the postmark date. The date of filing by facsimile is the date of the facsimile. The date of filing by commercial overnight delivery is the date you deliver the appeal to the commercial overnight delivery service.

11. Does the appeal have to be in a particular format?

Although an appeal may be in any format, it must be *in writing* and *contain all of the information specified in the Board's regulations*. An appeal *must be signed by you or your representative*, if you have designated one.

12. Do I have any recourse if I miss the deadline for filing an appeal?

Yes, but if you file an appeal after the deadline for filing, you may be ordered to explain the delay and show good cause for the late filing. You should never miss the filing date in order to gather evidence or other supporting documentation. Once your case has been assigned to an administrative judge, the judge will order your evidence at the appropriate time.

13. Who can represent me in an appeal before the Board, if I choose to have a representative?

You can choose any person to represent you so long as that person is willing and able to serve. You can also represent yourself. Typical representatives include private attorneys, union attorneys, and other union representatives. The agency may challenge your representative on the basis of conflict of interest or conflict of position. If your representative is disqualified, you will be given a reasonable time to obtain another representative.

14. Who decides my appeal?

When a Board regional or field office receives an appeal, the case is assigned to an administrative judge in that office. The administrative judge will issue a decision after considering all of the relevant evidence in the case.

15. Are hearings held on all appeals?

Once it is established that your appeal was timely filed and that the Board has jurisdiction, you generally have a right to a hearing on the merits of your case. The exceptions to this right are USERRA and VEOA appeals, in which the administrative judge has discretion whether to hold a hearing requested by an appellant. You may waive a right to a hearing and choose instead to have the appeal decided on the basis of the written record, which will include all pleadings, documents, and other materials filed in the proceeding. If there is a hearing, you will have the opportunity to present evidence, including the testimony of witnesses. Hearings are sometimes conducted by telephone or video conferencing rather than in person.

16. Who has the burden of proof in appeals proceedings?

The Agency: Except in IRA appeals, the agency has the burden of proving that it was justified in taking the action. If the agency meets its burden of proof, the Board must decide in favor of the agency, unless you show that there was "harmful error" in the agency's procedures, that the agency decision was based on a prohibited personnel practice, or that the decision was not in accordance with the law.

The Appellant: You have the burden of proving that your appeal is within the Board's jurisdiction and that it was timely filed. You also have the burden of proving any "affirmative defenses" that you raise, for example, discrimination or reprisal for whistleblowing. You also have the burden of proof in retirement cases and IRA appeals.

17. Is the decision issued by the administrative judge final?

The initial decision of the administrative judge will become the final decision of the Board 35 days after the date of the decision unless a party files a petition for review with the 3-member Board in Washington. *A petition for review by the MSPB must be filed within 35 days after the date the initial decision is issued or within 30 days after the date you receive the initial decision, whichever is later.*

18. What actions may administrative judges take on appeals?

The initial decision of the administrative judge may dismiss the appeal if the matter is not within the Board's jurisdiction or if the appeal was not filed within the required time limit and good cause for the untimely filing is not shown. Appeals that are not dismissed may be settled voluntarily by the parties. If the parties wish to have the settlement agreement enforceable by the Board, they must ask the administrative judge to enter the agreement into the record. In appeals that are decided on the merits (not dismissed or settled), the decision of the administrative judge may affirm the agency's action, reverse the action, or--in certain cases--mitigate (modify) the penalty imposed by the agency.

19. Do the procedures described above apply to all appeals to MSPB?

Some laws that authorize appeals to MSPB include procedural requirements that differ from the general procedures described in this publication. Such laws may require that you first exhaust the procedures of another agency before filing with MSPB, and the time limits for filing differ from those discussed in this publication. Also, because the basis for an appeal to MSPB is an alleged violation of one of these laws, you cannot expect your agency to advise you of an alleged violation and a right to appeal to MSPB. Laws with different procedural requirements include the following:

- *Whistleblower Protection Act of 1989* (Public Law No. 101-12) - This law authorizes an appeal to MSPB if you allege that you were subject to an agency action that was taken or threatened (or is about to be taken or threatened) because of certain legal disclosures of information, commonly known as whistleblowing. Unless the matter is directly appealable to the Board under law, rule, or regulation, you must first file a complaint with the Office of Special Counsel and exhaust the procedures of that office. The special provisions applicable to whistleblower appeals are discussed in a separate MSPB publication entitled [Questions & Answers About Whistleblower Appeals](#) available on the MSPB website. Also see Title 5 of the U.S. Code, [Section 1221](#), and the Board's regulations at Title 5 of the Code of Federal Regulations, Part 1209.
- *Presidential and Executive Office Accountability Act* (Public Law No. 104-331) - This law authorizes appeals to MSPB by employees of the Executive Office of the President, the White House Residence, and the official residence of the Vice President that allege violations of certain workplace laws, including the Family and Medical Leave Act and the Fair Labor Standards Act. You must first exhaust a mandatory period of counseling and mediation with the employing agency. Any subsequent appeal to MSPB must be filed no earlier than the 30th day and no later than the 90th day after you receive notice of the end of the mandatory period of counseling and mediation. See Title 3 of the U.S. Code, Chapter 5.
- *Uniformed Services Employment and Reemployment Rights Act (USERRA)* (Public Law No. 103-353) - This law authorizes an appeal to MSPB based on an agency's alleged violation of your employment or reemployment rights following your service in a uniformed service (including discrimination based on such service or on your status as a veteran). You have the option of appealing directly to MSPB or filing a complaint with the Department of Labor's Veterans' Employment and Training Service (DOL/VETS). If you file with DOL/VETS, you must first exhaust that agency's procedure and may appeal to MSPB later if DOL/VETS cannot resolve the matter. See Title 38 of the U.S. Code, Chapter 43, and the Board's regulations at Title 5 of the Code of Federal Regulations, Part 1208.
- *Veterans Employment Opportunities Act* (Public Law No. 105-339) - This law authorizes an appeal to MSPB based on an agency's alleged violation of any law or regulation relating to veterans' preference. You must first file a complaint with DOL/VETS and allow that agency 60 days to resolve the matter. If DOL/VETS advises you that it has been unable to resolve the matter, an appeal to MSPB must be filed within 15 days after the date you receive the

DOL/VETS notice. See Title 5 of the U.S. Code, sections [3330a](#), [3330b](#), and [3330c](#), and the Board's regulations at Title 5 of the Code of Federal Regulations, Part 1208.

20. How to Identify Attachments in a Pleading?

See <https://e-appeal.mspb.gov/faq.aspx>

CLICK ON FAQs [Click Here](#) to view tutorial.

21. How to View an e-Appeal generated Pleading with Attachments.

See <https://e-appeal.mspb.gov/faq.aspx>

CLICK ON FAQs [Click Here](#) to view tutorial.

22. Sample of properly bookmarked agency file.

See <https://e-appeal.mspb.gov/faq.aspx>

CLICK ON FAQs [Click Here](#) to view sample bookmarked agency file.

23. How do I add bookmarks to a pleading?

See <https://e-appeal.mspb.gov/faq.aspx>

CLICK ON FAQs [Click Here](#) to view instructional material.

24. What do I do if my account is locked?

If your account has become locked, please click [here](#) to submit a technical support request. MSPB responds to these requests 8-5 PM EST on business days.

See <https://e-appeal.mspb.gov/faq.aspx>

CLICK ON FAQs [to click here](#) to submit technical support request.

25. How do I cancel or withdraw my appeal?

If you have submitted your appeal to MSPB and received an acknowledgement order, you should submit a pleading stating your intent to withdraw your appeal. If you have submitted the appeal but not yet received an acknowledgement order, contact the regional office to which you submitted the appeal. Contact information is located at <https://www.mspb.gov/contact/contact.htm>.

26. I am having trouble viewing MSPB-issued documents?

MSPB-issued and other party documents are presented as PDF files. If you can view documents from other parties but not MSPB and are using Adobe software to view the PDF, the problem can often be resolved by using the full version of the Adobe software rather than the browser plugin. To see if this is your issue, open any PDF file with your Adobe software, then go to Edit, Preferences, Internet, then on right pane, uncheck Enable in Browser or Fast View if checked, save and retry viewing document from e-Appeal Repository.

27. I have questions about how my case will be processed or legal issues, should I submit a technical request ticket?

No, for these matters you should contact the office which is handling your appeal or the Office of the Clerk of the Board. Contact information is located at <https://www.mspb.gov/contact/contact.htm>.

28. If I could not submit all my documentation with my appeal, what should I do?

The online appeal process requests specific documentation that will aid MSPB in docketing your appeal. Once an appeal is docketed you will be provided with an acknowledgement order, which will contain the MSPB docket number. Once you have received this docket number, you may file additional documentation as a PLEADING.

29. I was unable to complete my appeal, how do I return to the appeal?

If you started your appeal and did a Save/Exit or the process timed out, you can return to the appeal by once again accessing NEW APPEAL option. After logging on, you will be prompted to resume your appeal or start another.

30. Is there a document which provides a quick introduction to how to file pleadings?

See <https://e-appeal.mspb.gov/faq.aspx>

CLICK ON FAQs to click here for brochure Yes, [Click Here](#) to view the MSPB e-filing Brochure.

31. How to access audio hearing files on a case?

See <https://e-appeal.mspb.gov/faq.aspx>

CLICK ON FAQs to click here to view media file help [Click Here](#) to view media file help.