



## MERIT SYSTEMS PROTECTION BOARD APPEAL FORM (MSPB FORM 185)

### INSTRUCTIONS FOR COMPLETING YOUR APPEAL

#### **MSPB's Authority to Review Employment Related Actions or Decisions**

The legal authority (jurisdiction) of the U.S. Merit Systems Protection Board (MSPB or the Board) to review employment-related actions or decisions is limited to those matters specifically entrusted to it by law, rule, or regulation. A listing of matters over which MSPB has jurisdiction can be found in MSPB's regulations at [5 C.F.R. § 1201.3](#). The administrative judge assigned to your case will determine whether MSPB has jurisdiction over the particular circumstances of your appeal.

More information about the adjudication of appeals before MSPB, including its regulations, may be found at MSPB's website: [www.mspb.gov](http://www.mspb.gov). MSPB's regulations are also published in the Code of Federal Regulations, [5 C.F.R. part 1200](#) et seq., available in many libraries.

#### **Time Limits for Filing an Appeal**

Please review MSPB's regulations and other relevant authority for the time limits applicable to the type of appeal you are filing. Generally, you must file your appeal within 30 calendar days of the effective date, if any, of the action or decision you are appealing, or the date you received the agency's decision, whichever is later. (Please note that Individual Right of Action (IRA), Uniformed Services Employment and Reemployment Rights Act (USERRA), and Veterans Employment Opportunities Act (VEOA) appeals **have different time limits**, as described in Appendix A.) In limited circumstances, the 30-day filing time limit may be extended if you and the agency mutually agree in writing to try to resolve your dispute through an alternative dispute resolution process before you file an appeal. See [5 C.F.R. § 1201.22\(b\)-\(c\)](#). The 30-day time limit may also be extended if you have previously filed a formal equal employment opportunity (EEO) complaint regarding the same matter, as described in Appendix A. The date of filing is the date your appeal is postmarked, the date of the facsimile (fax) transmission, the date it is delivered to a commercial overnight delivery service, the date of receipt in the regional or field office if you personally deliver it, or the date of submission if you file your appeal electronically. Do not delay filing your appeal merely because you do not currently have the documents requested in this form.

#### **Attachments**

Please submit only the attachments requested in this form when filing your appeal. The filing of an appeal is just the beginning of the adjudication process, and you will have additional opportunities to submit evidence and argument before a decision is issued. Further, the agency will submit all the documents contained in its record of the action. [5 C.F.R. § 1201.25\(c\)](#).

#### **Where to File an Appeal**

You must file your appeal of the agency's action or decision with MSPB's regional or field office responsible for your actual or potential duty station. If you are appealing a retirement or suitability decision by the Office of Personnel Management, you must file your appeal with MSPB's regional or field office responsible for where you live. See [5 C.F.R. § 1201.4\(d\)](#) and [1201.22\(a\)](#). For a list of regional and field offices, and the geographic areas for which they are responsible, see Appendix B.

**Please visit MSPB's e-Appeal system — [\[LINK\]](#) — to file your appeal electronically.** E-Appeal enables you to file pleadings electronically and provides electronic access to all case related documents filed by the agency and issued by MSPB.

### **Privacy Act Statement**

**AUTHORITY:** MSPB may hear appeals of Federal agency actions only when it has been authorized to do so by law, rule, or regulation. [5 U.S.C. § 7701\(a\)](#); [5 U.S.C. § 1204](#).

**PRINCIPAL PURPOSE(S):** This information is being collected for the primary purposes of adjudicating the appeals and matters described above, rendering MSPB decisions in these matters, and enabling case parties to have access to MSPB's electronic filing system. Additionally, some information about the appeal or case is used in depersonalized form for statistical purposes.

**ROUTINE USE(S):** The information on this form may be shared outside of MSPB as generally permitted under [5 U.S.C. § 552a\(b\)](#) of the Privacy Act of 1974, as amended. This includes sharing the information as necessary and authorized by routine uses published in MSPB/GOVT – 1 Appeals and Case Records, [77 Fed. Reg. 65206 \(Oct. 25, 2012\)](#), and upon written request, by agreement, or as required by law. MSPB decisions are available to the public under the provisions of the Freedom of Information Act (FOIA), [5 U.S.C. § 552](#), and are posted to MSPB's public website. Other documents from individual appeal and case files may also be made available as required by FOIA.

**DISCLOSURE:** The disclosure of information on this form is voluntary; however, failure to provide the information requested may delay or prevent the proper docketing of a matter and/or, the adjudication of a matter, which could result in the dismissal or delay of your appeal or matter, and/or prevent access to MSPB's e-Appeal system.

### **Paperwork Burden Disclosure Notice**

Public reporting burden for this data collection is estimated to vary from 60 and 120 minutes, with an average of 90 minutes per response. The burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and submitting this form. You are not required to respond to this collection of information unless a valid Office of Management and Budget (OMB) control number is displayed on this form. Send comments regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to Office of the Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW, Washington, DC 20419; by fax to 202-653-7130; or by email to [mspb@mspb.gov](mailto:mspb@mspb.gov).

**PART 1 - Appellant and Agency Information****Everyone must complete Part 1.***Please type or print legibly.***1. Name (last, first, middle initial)**Last  First  M. Initial 

Please list your first name as it appears in your official personnel records. For example, if your first name is "William" on your official personnel records, please list it that way on the appeal form, not "Bill" or "Willy."

**2. Present address (number and street, city, state, and ZIP code)****You must promptly notify the Board in writing of any change in your mailing address while your appeal is pending.**Address: City:  State:  ZIP Code: **3. Telephone numbers (include area code) and email address****You must promptly notify the Board in writing of any change in your telephone number(s) or email address while your appeal is pending.**Cell:  Home:  Work:  Fax: Email Address: **4. Name and address of the agency that took the action or made the decision you are appealing (include bureau or division, street address, city, state and ZIP code)**Agency Name: Bureau: Address: Phone Number: City:  State:  ZIP Code: **5. Your Federal employment status at the time of the action or decision you are appealing:**
 Permanent     Temporary     Term  
 Seasonal     Applicant     Retired  
 None
**6. Type of appointment (if applicable):**
 Competitive     Excepted  
 Postal Service     SES  
 Other (*describe*):
**7. Your position, title, grade, and duty station at the time of the action or decision you are appealing (if applicable):**Occupational Series or Cluster:  Position Title: Grade or Pay Band:  Duty Station: **8. Are you entitled to veteran's preference? See [5 U.S.C. § 2108](#).** Yes     No**9. Length of Federal service (if applicable):** Years     Months**10. Were you serving a probationary, trial, or initial service period at the time of the action or decision you are appealing?** Yes     No**11. HEARING:** You may have a right to a hearing before an administrative judge. If you elect not to have a hearing, the administrative judge will make a decision on the basis of the submissions of the parties. Do you want a hearing? Yes     No

**PART 2 - Agency Personnel Action or Decision (non-retirement)**

**Complete this part if you are appealing a Federal agency personnel action or decision other than a decision directly addressing your retirement rights or benefits.** This includes certain actions that might not otherwise be appealable to the Board: individual right of action (IRA) appeals under the Whistleblower Protection Act (WPA); appeals under the Uniformed Services Employment and Reemployment Rights Act (USERRA); or appeals under the Veterans Employment Opportunities Act (VEOA). An explanation of these three types of appeals is provided in **Appendix A**.

12. Check the box that best describes the agency **personnel action or decision** you are appealing. (If you are appealing more than one action or decision, check each box that applies.)

- |   |   |
|---|---|
| <input type="checkbox"/> Removal (termination after completion of probationary or initial service period)         | <input type="checkbox"/> Involuntary resignation  |
| <input type="checkbox"/> Termination during probationary or initial service period                                | <input type="checkbox"/> Involuntary retirement   |
| <input type="checkbox"/> Reduction in grade, pay, or band   | <input type="checkbox"/> Denial of within-grade increase  |
| <input type="checkbox"/> Suspension for more than 14 days   | <input type="checkbox"/> Furlough of 30 days or less  |
| <input type="checkbox"/> Failure to restore/reemploy/reinstate or improper restoration/reemployment/reinstatement | <input type="checkbox"/> Separation, demotion or furlough for more than 30 days by reduction in force (RIF) |
| <input type="checkbox"/> Negative suitability determination   | <input type="checkbox"/> Other action (describe):   |
|   | <div style="border: 1px solid black; height: 40px; width: 100%;"></div>                                     |

13. Date you received the agency's final decision letter (if any) (MM/DD/YYYY):

14. Effective date (if any) of the agency action or decision (MM/DD/YYYY):

15. Prior to filing this appeal, did you and the agency mutually agree in writing to try to resolve the matter through an alternative dispute resolution (ADR) process?

- Yes (**attach a copy of the agreement**)       No

16. Explain briefly why you think the agency was wrong in taking this action, including whether you believe the agency engaged in harmful procedural error, committed a prohibited personnel practice, or engaged in one of the other claims listed in **Appendix A**. **Attach the agency's proposal letter, decision letter, and SF-50, if available.** Attach additional sheets if necessary (bearing in mind that there will be later opportunities to supplement your filings).

**PART 2 - Agency Personnel Action or Decision (non-retirement, continued)**

17. With respect to the agency personnel action or decision you are appealing, have you, or has anyone on your behalf, filed a grievance under a negotiated grievance procedure provided by a collective bargaining agreement?

Yes  No

If "Yes," **attach a copy of the grievance**, enter the date it was filed, and enter the place where it was filed if different from your answer to question 4 in Part 1.

Agency Name:  Date Filed (MM/DD/YYYY):

Bureau:

Address:

City:  State:  ZIP Code:

If a decision on the grievance has been issued, **attach a copy of the decision** and enter the date it was issued.

Date Issued (MM/DD/YYYY):

**Answer Question 18 ONLY if you are filing an IRA appeal.**

18. If you filed a whistleblowing complaint with the Office of Special Counsel (OSC), provide the date on which you did so and the date on which OSC made a decision or terminated its investigation, if applicable. **Attach copies of your complaint and OSC's termination of investigation letter** notifying you of your right to seek corrective action from the Board.

Date Filed (MM/DD/YYYY):

Date of OSC decision or termination of investigation (MM/DD/YYYY):

**Answer Question 19 ONLY if you are filing a USERRA or VEOA appeal.**

19. If you filed a complaint with the Department of Labor (DOL), list the date on which you did so, and **attach a copy of your complaint**. If DOL has made a decision on your complaint, list the date of this decision, and **attach a copy of it**. If DOL has not made a decision on your complaint within 60 days from the date you filed it, state whether you have notified DOL of your intent to file an appeal with the Board, and **attach a copy of such notification**.

Date Filed (MM/DD/YYYY):

Has DOL made a decision on your complaint?

Yes  No

If "Yes," enter the date it was made. If "No," state whether you have notified DOL of your intent to file an appeal with the Board, and **attach a copy of such notification**.

Date of DOL decision (MM/DD/YYYY):

Notified DOL of your intent to file an appeal with the Board?

**PART 3 - OPM or Agency Retirement Decision**

**Complete this part if you are appealing a decision of the Office of Personnel Management (OPM) or other Federal agency directly addressing your retirement rights or benefits.**

20. In which retirement system are you enrolled?

- CSRS       CSRS Offset       FERS
- Other, *describe*:

21. Are you a:

- Current Employee       Annuitant
- Surviving Spouse
- Other, *describe*:

22. If retired, date of retirement, or if unknown, approximate date:

Date Retired (MM/DD/YYYY):

23. Describe the retirement decision you are appealing.

24. Have you received a final or reconsideration decision from OPM or another Federal agency?

- Yes (***attach a copy***)       No

If "Yes," on what date did you receive the decision?

Date Received (MM/DD/YYYY):

Provide the OPM claim number (CSA or CSF) in your appeal:

OPM Claim Number:

25. Explain briefly why you think OPM or another Federal agency was wrong in making this decision.

## PART 4 - Designation of Representative

26. Has an individual or organization agreed to represent you in this proceeding before the Board? (You may designate a representative at any time. However, it is unlikely that the appeals process will be delayed for reasons related to obtaining or maintaining representation. Moreover, you must promptly notify the Board in writing of any change in representation.)

Yes (*complete the information below and sign*)

No

### DESIGNATION:

"I hereby designate  to serve as my representative during the course of this appeal. I understand that my representative is authorized to act on my behalf. In addition, I specifically delegate to my representative the authority to settle this appeal on my behalf. **I understand that any limitation on this settlement authority must be filed in writing with the Board.**"

Representative's address (*number and street, city, state and ZIP code*)

Address:

City:

State:

ZIP Code:

Representative's telephone numbers (*include area code*) and email address

Office:

Fax:

Other:

Email

Address:

### SIGN BELOW TO MAKE YOUR DESIGNATION OF REPRESENTATIVE EFFECTIVE

\_\_\_\_\_  
Appellant's Signature

\_\_\_\_\_  
Date (MM/DD/YYYY)

**PART 5 - Certification**

**27. I certify that all of the statements made in this form and any attachments are true, complete, and correct to the best of my knowledge and belief.**

\_\_\_\_\_  
Signature of Appellant or Representative

\_\_\_\_\_  
Date (MM/DD/YYYY)



## APPENDIX A

### Additional Claims Regularly Raised in MSPB Appeals

**Harmful Error:** Error by the agency in the application of its procedures that is likely to have caused the agency to reach a conclusion different from the one it would have reached in the absence or cure of the error. The burden is upon the appellant to show that the error was harmful, i.e., that it caused substantial harm or prejudice to his or her rights. [5 C.F.R. § 1201.4\(r\)](#).

**Prohibited Personnel Practice:** A claim that the agency action or decision you are challenging was the result of one of the personnel practices prohibited by [5 U.S.C. § 2302\(b\)](#). Among the prohibited personnel practices most likely to be relevant as an affirmative defense in an MSPB proceeding are: unlawful discrimination under subsection (b)(1); retaliation for protected whistleblowing under subsection (b)(8); and retaliation for other protected activity under subsection (b)(9).

- **Unlawful Discrimination:** A claim that the agency action was the result of prohibited discrimination based on race, color, religion, sex, national origin, disability, age, marital status, political affiliation, genetic information, and retaliation for prior equal employment opportunity (EEO) activity. See [5 U.S.C. §§ 2302\(b\)\(1\), 7702](#); [5 C.F.R. part 1201](#), subpart E; [29 C.F.R. part 1630](#) and [Appendix to Part 1630](#); [42 U.S.C. § 2000ff](#) et seq.; [29 C.F.R. § 1614.302-308](#). If you filed a formal discrimination complaint, give the date on which you did so, state whether and when the agency issued a final decision on your discrimination complaint, and provide copies of both.
- **Retaliation for whistleblowing activity under [5 U.S.C. § 2302\(b\)\(8\)](#) and [\(b\)\(9\)\(A\)\(i\), \(B\), \(C\), or \(D\)](#):** A claim that the agency action was taken in retaliation for the disclosure of information the individual reasonably believes demonstrates a violation of law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; or substantial and specific danger to public health or safety; or in retaliation for the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation with regard to remedying a violation of subsection (b)(8); for testifying or otherwise lawfully assisting any individual in the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation; for cooperating with or disclosing information to the Inspector General (or any other component responsible for internal investigation or review) of an agency, or the Special Counsel, in accordance with applicable provisions of law; or for refusing to obey an order that would require a violation of law, rule, or regulation. See [5 U.S.C. § 2302\(b\)\(8\), \(b\)\(9\)\(A\)\(i\), \(B\), \(C\), and \(D\)](#).
- **Retaliation for other protected activity under [5 U.S.C. § 2302\(b\)\(9\)\(A\)\(ii\)](#):** A claim that the agency action was taken in retaliation for the exercise of any appeal, complaint, or grievance right, other than with regard to remedying a violation of [5 U.S.C. § 2302\(b\)\(8\)](#).

**Violation of Rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA):** A claim that the agency action violated rights and benefits under 38 U.S.C. chapter 43 by denying initial employment, reemployment, retention in employment, promotion, or any benefit of employment on the basis of membership, application for membership, performance of service, application for service, or obligation to perform service in a uniformed service. See [5 C.F.R. part 1208](#), subpart B.

**Violation of a Law or Regulation relating to Veterans' Preference pursuant to the Veterans Employment Opportunities Act (VEOA):** A claim that the agency action violated rights related to veterans' preference under any statute or regulation. See [5 C.F.R. part 1208](#), subpart C; [5 U.S.C. § 3330\(a\)](#).

**Not in accordance with law:** A claim that the agency's action was unlawful in its entirety, that is, there is no legal authority for the action.

## **IRA, USERRA, and VEOA Appeals**

The law provides for three types of appeals in certain situations that might not otherwise be appealable to MSPB ([5 C.F.R. § 1201.3\(a\)](#) provides a listing of matters directly appealable to MSPB, i.e., “otherwise appealable actions”): Individual Right of Action (IRA) appeals under the Whistleblower Protection Act (WPA) and Whistleblower Protection Enhancement Act (WPEA) pursuant to [5 U.S.C. § 1221](#); appeals under USERRA pursuant to [38 U.S.C. § 4324](#); and appeals under VEOA pursuant to [5 U.S.C. § 3330a](#).

**Note:** As described above, allegations of retaliation for whistleblowing, as well as allegations under USERRA and VEOA, may be brought as additional claims in cases that are otherwise appealable to MSPB.

**IRA Appeals under the WPA and WPEA.** Subsection (b)(8) of [5 U.S.C. § 2302](#) makes it a prohibited personnel practice to threaten, propose, take, or not take a personnel action listed in [5 U.S.C. § 2302\(a\)\(2\)](#) because of an individual's disclosure of information that he or she reasonably believes shows a violation of law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; or substantial and specific danger to public health or safety. Subsections [\(b\)\(9\)\(A\)\(i\), \(B\), \(C\), and \(D\)](#) make it a prohibited personnel practice to threaten, propose, take, or not take a personnel action in retaliation for the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation with regard to remedying a violation of subsection (b)(8); for testifying or otherwise lawfully assisting any individual in the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation; for cooperating with or disclosing information to the Inspector General (or any other component responsible for internal investigation or review) of an agency, or the Special Counsel, in accordance with applicable provisions of law; or for refusing to obey an order that would require a violation of law, rule, or regulation. If the personnel action allegedly taken in reprisal for making a protected disclosure or engaging in protected activity is not otherwise appealable to MSPB, you must first file a whistleblower complaint with the Office of Special Counsel (OSC) and exhaust the procedures of that office, see [5 U.S.C. § 1214\(a\)\(3\)](#), before you may file an IRA appeal with MSPB under [5 U.S.C. § 1221](#).

**USERRA Appeals.** In USERRA appeals, appellants allege that agencies have violated their rights and benefits under [38 U.S.C. chapter 43](#) by denying initial employment, reemployment, retention in employment, promotion, or any benefit of employment on the basis of their membership, application for membership, performance of service, application for service, or obligation to perform service in a uniformed service. See [5 C.F.R. part 1208, subpart B](#). To pursue redress for a USERRA violation, you may either file a USERRA complaint with the Department of Labor (DOL) or file an appeal with MSPB. However, if you first file a USERRA complaint with DOL, you must exhaust DOL procedures before you may file an appeal with MSPB. See [5 C.F.R. § 1208.11](#).

**VEOA Appeals.** A VEOA appeal is one in which a preference eligible (defined in [5 U.S.C. § 2108](#)) or veteran described in [5 U.S.C. § 3304\(f\)\(1\)](#) alleges that a Federal agency violated their rights under any statute or regulation relating to veterans' preference. See [5 C.F.R. part 1208, subpart C](#). Unless you are making a VEOA claim in an otherwise appealable action, you must file a VEOA complaint with DOL and allow DOL at least 60 days to try to resolve the matter before filing an appeal with MSPB.

**Time Limits for Filing IRA, USERRA, and VEOA Appeals, and  
Following the Filing of a Formal EEO Complaint**

**IRA Appeals.** If you are filing an IRA appeal, you must file no later than 65 days after the date of the OSC notice advising you that the Special Counsel will not seek corrective action, or within 60 days after the date you received the OSC notice, whichever is later. See [5 C.F.R. § 1209.5](#).

**USERRA Appeals.** If you are filing a USERRA appeal, there is no time limit for filing. See [5 C.F.R. § 1208.12](#). If you file a USERRA complaint with DOL first, you must exhaust the procedures of DOL before you may file an appeal with MSPB.

**VEOA Appeals.** If you are filing a VEOA appeal, you must file it within 15 days after the date you received notice that DOL was unable to resolve the matter. See [5 C.F.R. § 1208.22](#). Note: Before filing with MSPB, you must file a VEOA complaint with DOL, which is allowed at least 60 days to try to resolve the matter.

**Formal EEO Complaints.** If you have previously filed a formal EEO complaint regarding the same matter, you must file your MSPB appeal within 30 days after receiving the agency's resolution or final decision as to that complaint, or you may file at any time after 120 days have elapsed from the filing of the complaint in the absence of such an agency resolution or decision. See [5 C.F.R. § 1201.154\(b\)](#).

**APPENDIX B****MSPB Regional and Field Offices**

**Atlanta Regional Office:** 401 West Peachtree Street, N.W., 10th floor, Atlanta, GA 30308-3519

Telephone: (404) 730-2751; Fax: (404) 730-2767

*Geographic Area:* Alabama; Florida; Georgia; Mississippi; South Carolina; and Tennessee.

**Central Regional Office:** 230 South Dearborn Street, 31st floor, Chicago, IL 60604-1669

Telephone: (312) 353-2923; Fax: (312) 886-4231

*Geographic Area:* Illinois; Indiana; Iowa; Kansas City, Kansas (only Kansas City); Kentucky; Michigan; Minnesota; Missouri; Ohio; and Wisconsin.

**Dallas Regional Office:** 1100 Commerce Street, Room 620, Dallas, TX 75242-9979

Telephone: (214) 767-0555; Fax: (214) 767-0102

*Geographic Area:* Arkansas; Louisiana; Oklahoma; and Texas.

**Denver Field Office:** 165 South Union Blvd., Suite 318, Lakewood, CO 80228-2211

Telephone: (303) 969-5101; Fax: (303) 969-5109

*Geographic Area:* Arizona; Colorado; Kansas (except Kansas City); Montana; Nebraska; New Mexico; North Dakota; South Dakota; Utah; and Wyoming.

**New York Field Office:** 26 Federal Plaza, Room 3137-A, New York, NY 10278-0022

Telephone: (212) 264-9372; Fax: (212) 264-1417

*Geographic Area:* New Jersey counties of Bergen, Essex, Hudson, and Union; New York; Puerto Rico; and Virgin Islands.

**Northeastern Regional Office:** 1601 Market Street, Suite 1700, Philadelphia, PA 19103

Telephone: (215) 597-9960; Fax: (215) 597-3456

*Geographic Area:* Connecticut; Delaware; Maine; Maryland (except the counties of Montgomery and Prince George's) Massachusetts; New Hampshire; New Jersey (except the counties of Bergen, Essex, Hudson, and Union); Pennsylvania; Rhode Island; Vermont; and West Virginia.

**Washington Regional Office:** 1901 S. Bell Street, Suite 950, Arlington, VA 22202

Telephone: (703) 756-6250; Fax: (703) 756-7112

*Geographic Area:* Maryland counties of Montgomery and Prince George's; North Carolina; Virginia; Washington, DC; and all overseas areas not otherwise covered.

**Western Regional Office:** 1301 Clay Street, Suite 1380N, Oakland, CA 94612-5217

Telephone: (510) 273-7022; Fax: (510) 273-7136

*Geographic Area:* Alaska; California; Hawaii; Idaho; Nevada; Oregon; Washington; and Pacific overseas.