

# Federal Employment Appeals Guide

## Executive Summary

The *Federal Employment Appeals Guide* serves as a comprehensive resource for federal employees seeking to understand and navigate the appeals process for employment-related disputes. This guide outlines the key steps, legal frameworks, and procedural requirements essential for effectively challenging adverse employment decisions within the federal workforce.

The guide begins by providing an overview of federal employment laws, including the Civil Service Reform Act (CSRA) and the Merit Systems Protection Board (MSPB), which serves as the primary adjudicatory body for most federal employment appeals. It clarifies the rights of federal employees, the types of employment actions that can be appealed, and the statutory deadlines that must be met.

Key sections of the guide detail the process of filing an appeal, from initial grievance procedures to formal hearings and possible further review by the U.S. Court of Appeals for the Federal Circuit. It also addresses common grounds for appeal, such as wrongful termination, disciplinary actions, and whistleblower retaliation.

Additionally, the guide offers practical tips on preparing documentation, presenting evidence, and understanding the burden of proof in various types of cases. Special emphasis is placed on the importance of legal representation, alternative dispute resolution options, and maintaining professional decorum throughout the appeals process.

The *Federal Employment Appeals Guide* is an essential tool for federal employees, human resources professionals, and legal practitioners alike, ensuring that all parties are equipped with the knowledge necessary to pursue fair and just outcomes in employment disputes.

### **Disclaimer:**

This guide is intended for informational purposes only and should not be construed as legal advice. Its contents do not establish an attorney-client relationship. Users are encouraged to seek personalized legal counsel for their specific circumstances. For professional legal assistance, it is advisable to contact your local bar association for a list of attorneys specializing in federal employment law.

# Overview of Federal Employment Laws

Federal employment laws form the backbone of the rights and responsibilities governing federal employees. This section of the *Federal Employment Appeals Guide* explores key legal frameworks with relevant citations, providing employees with essential knowledge for understanding their workplace protections.

## Civil Service Reform Act (CSRA):

- **5 U.S.C. § 2301-2302:** Establishes merit system principles and prohibits personnel practices such as discrimination, nepotism, and retaliation against whistleblowers.
- **5 U.S.C. § 7701:** Outlines the appellate procedures for employees challenging adverse actions before the MSPB.

## Merit Systems Protection Board (MSPB):

- **5 U.S.C. § 1201:** Establishes the MSPB as an independent agency to hear and decide appeals from federal employees.
- **5 C.F.R. Part 1201:** Provides the procedural rules governing MSPB appeals, including filing requirements, timelines, and hearing processes.

## Whistleblower Protection Act (WPA):

- **5 U.S.C. § 2302(b)(8):** Protects employees who disclose information they reasonably believe evidences violations of law, gross mismanagement, gross waste of funds, or threats to public health or safety.
- **5 U.S.C. § 1214:** Empowers the Office of Special Counsel to investigate and prosecute claims of whistleblower retaliation.

## Equal Employment Opportunity (EEO) Laws:

- **29 U.S.C. § 633a:** Prohibits age discrimination in federal employment under the Age Discrimination in Employment Act (ADEA).
- **42 U.S.C. § 2000e-16:** Prohibits employment discrimination based on race, color, religion, sex, or national origin under Title VII of the Civil Rights Act of 1964.

## Other Relevant Laws:

- **5 U.S.C. § 3330a:** Establishes veterans' preference rights in federal employment under the Veterans Employment Opportunities Act (VEOA).
- **38 U.S.C. §§ 4301-4335:** Protects the employment and reemployment rights of employees who serve in the military, with appeal rights to the MSPB.
- **29 U.S.C. § 2611-2619:** Provides federal employees with family and medical leave rights under the Family and Medical Leave Act (FMLA).

# Overview of the U.S. Merit Systems Protection Board (MSPB)

## About MSPB

The U.S. Merit Systems Protection Board (MSPB) is an independent, quasi-judicial agency within the Executive branch that serves as the guardian of Federal merit systems. It was established by Reorganization Plan No. 2 of 1978, codified by the Civil Service Reform Act of 1978 (CSRA), Public Law No. 95-454. Effective January 11, 1979, the CSRA replaced the Civil Service Commission with three independent agencies: the Office of Personnel Management (OPM), the Federal Labor Relations Authority (FLRA), and the MSPB. The MSPB assumed the Civil Service Commission's employee appeals functions and gained new responsibilities for merit systems studies and reviewing OPM's significant actions.

The MSPB's mission is to protect merit system principles and promote an effective Federal workforce free from prohibited personnel practices. Its vision is a highly qualified, diverse Federal workforce managed fairly and effectively, delivering excellent service to the American people. The Board upholds values of Excellence, Fairness, Timeliness, and Transparency.

## Jurisdiction and Responsibilities

The MSPB primarily adjudicates individual employee appeals and conducts merit systems studies. It also reviews significant actions by OPM that may impact merit. The Board does not handle discrimination complaints unless raised in personnel appeals, labor disputes, or employment-related advice, which fall under the jurisdiction of the EEOC, FLRA, and OPM respectively. Allegations of civil service law violations are investigated by the Office of Special Counsel (OSC), which also prosecutes such cases before the MSPB.

## Key Functions

- **Original Jurisdiction:** Covers OSC disciplinary actions, Hatch Act appeals, and actions against Administrative Law Judges.
- **Appellate Jurisdiction:** Includes adverse actions (suspensions, removals), performance-based actions, reductions in force, and employment claims under laws like VEOA and USERRA.
- **Procedural Rights:** Employees have due process rights, including hearings, representation, discovery, and potential reimbursement of attorney fees if they prevail.

- **Disciplinary Actions:** Agencies must prove charges, while employees must prove jurisdiction, timeliness, and defenses.
- **Whistleblower Protections:** MSPB hears appeals from employees alleging retaliation for protected disclosures.
- **Mixed Cases:** Handles cases involving both personnel actions and discrimination claims, often working with the EEOC.
- **Merit Systems Studies:** Conducts research on federal personnel management and reports findings to the President, Congress, and the public.

### Merit System Principles and Prohibited Practices

The MSPB enforces merit principles such as fair treatment, merit-based recruitment, equal pay, and protection from arbitrary actions and retaliation. It addresses prohibited personnel practices, including discrimination, coercion, and favoritism.

### Recent Activities

The MSPB publishes studies on whistleblower protections, employee perceptions of prohibited practices, and federal workforce diversity. It ensures the integrity of federal employment by upholding merit system standards, reviewing OPM actions, and adjudicating employee appeals.

## Sample Timeline of a MSPB Appeal

1. **Day 0: Adverse Action Issued**

The federal agency formally notifies the employee of the adverse action (such as removal, demotion, or suspension). This notice typically includes details of the charges, the effective date of the action, and information about appeal rights.

2. **Day 1-29: Preparation Period**

During this period, the employee should gather documentation, seek legal counsel, and begin preparing their appeal. It is crucial to review the adverse action notice carefully and collect supporting evidence, such as performance evaluations, emails, witness statements, and other relevant materials.

3. **Day 30: Deadline to File Appeal with MSPB**

The employee must file an appeal with the Merit Systems Protection Board (MSPB) within 30 calendar days of the effective date of the adverse action. Missing this deadline may result in losing the right to appeal.

4. **Day 31-60: Agency Response and Discovery Period Begins**

After receiving the appeal, the agency has approximately 20 days to file its response. Once the agency's response is submitted, the discovery process begins. Both parties exchange information, request documents, and conduct depositions to build their cases. The discovery period typically lasts 30 days but can be extended upon request.

5. **Day 61-90: Settlement Discussions and Pre-Hearing Submissions**

During this phase, both parties may engage in settlement discussions to resolve the dispute without a formal hearing. Additionally, pre-hearing submissions, including witness lists, exhibit lists, and pre-hearing statements, are filed with the MSPB judge.

6. **Day 90-120: Pre-Hearing Conference and Final Hearing**

A pre-hearing conference is held with the MSPB judge to discuss procedural matters, clarify issues, and finalize the schedule. The final hearing is then conducted, where both parties present evidence, call witnesses, and make arguments before the judge. This hearing is similar to a trial but less formal.

7. **Day 120+: Initial Decision Issued**

After the hearing, the MSPB judge typically issues an initial decision within 30-60 days. The initial decision outlines the judge's findings, conclusions, and any corrective action or relief granted.

8. **Within 35 Days of the Initial Decision: Petition for Review (if needed)**

If either party disagrees with the initial decision, they have 35 calendar days to file a Petition for Review with the full MSPB Board. The Board may accept or deny the petition, and their decision is considered final.

9. **After the MSPB Final Decision: Further Appeals (if applicable)**

If the employee disagrees with the MSPB's final decision, they may appeal to the U.S. Court of Appeals for the Federal Circuit within 60 days of the Board's final ruling.

# Federal Employee Rights and Appeal Process

## Rights of Federal Employees

Federal employees are entitled to specific protections under the law, particularly when facing adverse employment actions. These rights include:

- **Due Process:** Employees must be given notice of any proposed adverse action and an opportunity to respond before a final decision is made.
- **Right to Appeal:** Employees have the right to challenge certain personnel actions through the Merit Systems Protection Board (MSPB).
- **Legal Representation:** Employees may choose to be represented by an attorney or other qualified individual during the appeal process.
- **Protection Against Retaliation:** Whistleblower protections and other laws safeguard employees from retaliation for exercising their rights.

## Appealable Employment Actions

Not all employment decisions can be appealed to the MSPB. The following types of adverse actions are generally within the MSPB's jurisdiction:

- Removals (terminations)
- Suspensions lasting more than 14 days
- Reductions in grade or pay
- Furloughs of 30 days or less
- Denials of within-grade pay increases in certain cases
- Some cases involving retirement benefits administered by the Office of Personnel Management (OPM)

Additionally, specific whistleblower retaliation claims and violations of the Uniformed Services Employment and Reemployment Rights Act (USERRA) may also be appealed.

## Statutory Deadlines

Federal employees must adhere to strict deadlines when filing an MSPB appeal:

- **Filing Deadline:** An appeal must be filed within 30 calendar days from the effective date of the agency's action or from the date the employee received the decision notice, whichever is later.

- **Petition for Review:** If an initial decision is unfavorable, a petition for review must be filed within 35 days from the date of the decision.
- **Federal Circuit Appeal:** If seeking further review, an appeal to the U.S. Court of Appeals for the Federal Circuit must be filed within 60 days from the date of the final MSPB decision.

Failure to meet these deadlines can result in dismissal of the appeal, barring exceptional circumstances that justify a waiver.

Understanding these rights, the types of appealable actions, and the statutory deadlines is essential for federal employees seeking to challenge adverse employment decisions effectively.

# MSPB Appeal Process Checklist

## **Prepare and File an Appeal:**

- Visit MSPB's e-Appeal Online website for electronic filing.  
<https://www.mspb.gov/e-Appeal/index.htm>
- Use the Appeal Form for postal mail, fax, or personal/commercial delivery.

## **Information Required:**

- Appeal must be in writing with all required details (5 C.F.R. §§ 1201.24, 1209.6, 1208.13, 1208.23, 1203.11).

## **When to File:**

- Most Appeals: Within 30 days of action date or agency decision receipt.
- ADR Agreement: Extended to 60 days if ADR is agreed upon.
- IRA Appeals: Within 65 days of OSC notice or 60 days of receipt.
- USERRA Appeals: No time limit.
- VEOA Appeals: After 61 days from filing with Secretary of Labor or 15 days after unresolved notice.
- VA Appeals: Within 10 business days of action.

## **Where to File:**

- File with MSPB regional/field office of duty station area or residence area for OPM decisions.

## **What to File:**

- Include notice of action, agency decision, and SF-50 (if available). Evidence of administrative process exhaustion for IRA, VEOA, USERRA.

## **Designate a Representative:**

- Choose any willing person or self-represent. Written, signed designation required.

## **Additional Information:**

- Access Q&A documents on MSPB appeals and whistleblowing claims.

## **After Filing:**

- Await Acknowledgment Order from AJ, requiring agency statement and documents.
- Respond to notices and orders during proceedings.
- Participate in status/prehearing conferences.

## **Petition for Review:**

- File with Clerk of the Board via e-Appeal, fax, or mail within 35 days of initial decision.
- Cross petitions within 25 days, responses within 25 days, and replies within 10 days.
- Follow legal standards for review (5 U.S.C. § 7701(c)(2), § 1201.115).

**Judicial Review:**

- File petition with U.S. Court of Appeals for the Federal Circuit or competent circuit court within 60 days of final decision.

**Whistleblower Claims:**

- File judicial review petitions with Federal Circuit or any competent circuit court as per the All-Circuit Review Act.

# Understanding the Burden of Proof in MSPB Appeals

The burden of proof varies depending on the type of case:

- **Agency's Burden:** In cases involving removals, suspensions, or other disciplinary actions, the agency must prove by a preponderance of the evidence that the action was justified.
- **Employee's Burden:** In whistleblower retaliation claims or USERRA cases, the employee must initially establish a prima facie case showing that the protected activity or status was a contributing factor to the adverse action. The burden then shifts to the agency to demonstrate that the action would have occurred regardless of the protected status or activity.

## Legal Representation

The guide emphasizes the importance of securing legal representation to navigate the complexities of MSPB appeals. An experienced attorney can:

- Provide expert advice on strategy and procedure
- Assist in drafting and filing documents
- Represent the employee during hearings and negotiations
- Advocate effectively to ensure the employee's rights are protected

## Alternative Dispute Resolution (ADR)

Employees are encouraged to consider ADR options, such as mediation or settlement discussions, which can:

- Provide a faster and less adversarial resolution
- Allow for mutually agreeable outcomes
- Save time and costs associated with prolonged litigation

## Maintaining Professional Decorum

Professionalism is essential throughout the appeals process. Employees should:

- Communicate respectfully with all parties, including agency representatives, MSPB staff, and witnesses
- Adhere to deadlines and procedural requirements
- Present themselves professionally during hearings, whether in person or virtually

# Best Practices for Federal Employment Appeals

## **1. Understand Your Rights and Deadlines:**

- Familiarize yourself with the applicable statutes (such as the Civil Service Reform Act, Whistleblower Protection Act, and Title 5) and the specific deadlines for filing appeals (typically 30 days from the date of the adverse action).

## **2. Request All Relevant Documents:**

- Obtain and review your personnel file, performance appraisals, and any documentation related to the adverse action. Request documents from your agency through formal channels if necessary.

## **3. Consult with an Attorney or Union Representative:**

- Seek legal counsel from an attorney specializing in federal employment law or consult your union representative if you are a member. An expert can help assess your case and guide you through the process.

## **4. Prepare a Clear and Comprehensive Appeal:**

- Draft your appeal statement with clear facts, timelines, and legal arguments. Reference specific statutes, agency policies, and supporting documents.

## **5. Gather Supporting Evidence:**

- Collect all relevant evidence, including emails, memos, performance reviews, and witness statements. Organize your evidence to support your claims and defenses.

## **6. File Your Appeal on Time:**

- Submit your appeal to the correct forum (such as the MSPB, EEOC, or agency grievance board) before the deadline. Use certified mail or electronic filing for proof of submission.

## **7. Engage in Discovery:**

- Utilize the discovery process to request documents, conduct depositions, and gather evidence from your agency. Be thorough and timely in your requests and responses.

## **8. Maintain Professionalism:**

- Communicate respectfully and professionally with all parties involved, including agency representatives, judges, and your legal counsel. Avoid emotional or inflammatory language in your submissions.

## **9. Prepare for the Hearing:**

- Outline your case, prepare opening and closing statements, and anticipate the agency's arguments. Prepare your witnesses, if any, and review all evidence beforehand.

**10. Consider Settlement Options:**

- Explore settlement options during pre-hearing conferences or mediation. Settlements can offer a quicker resolution and may provide favorable terms without the uncertainty of a final decision.

**11. Review Initial Decisions Promptly:**

- Upon receiving the administrative judge's initial decision, review it carefully. Decide whether to accept the outcome or file a petition for review with the full MSPB or a higher court.

**12. Stay Organized and Keep Records:**

- Maintain copies of all correspondence, filings, and evidence. A well-organized file ensures you have all necessary documents at each stage of the process.

**13. Seek Emotional Support:**

- The appeal process can be stressful. Rely on trusted friends, family, or professional counselors for emotional support while navigating this challenging time.

## Privacy Act Requests for Federal Employees

The Privacy Act of 1974 (5 U.S.C. § 552a) grants federal employees the right to access and obtain copies of records maintained about them by federal agencies, including personnel files, even if they have been locked out of the agency's system.

### Key Provisions of the Privacy Act Relevant to Federal Employees:

- **Right to Access Records (5 U.S.C. § 552a(d)(1)):**  
Federal employees have the right to request and obtain copies of records that an agency maintains about them, including their Official Personnel Folder (OPF), performance evaluations, disciplinary records, emails, and other documents relevant to their employment.
- **Agency Obligation to Respond (5 U.S.C. § 552a(d)(3)):**  
Agencies are required to respond to Privacy Act requests within a reasonable timeframe, generally within 30 days, providing access to requested records unless they fall under specific exemptions.
- **No Need for Current System Access:**  
Even if an employee has been locked out of an agency's internal systems (such as HR platforms), the Privacy Act still entitles them to obtain their personnel records through a formal request.

### Steps on How to File a Privacy Act Request:

#### 1. **Identify the Records Needed:**

##### **Specify the documents you are requesting, such as:**

- Official Personnel Folder (OPF)
- Performance evaluations
- Disciplinary records
- Emails or communications related to adverse actions
- Training records or awards

#### 2. **Submit a Written Request:**

Address your request to your agency's Privacy Officer or FOIA/Privacy Act Office. Most agencies have designated offices to handle such requests.

### **Include the following in your request:**

- Your full name, position, and contact information
- A clear statement that you are requesting records under the Privacy Act of 1974
- A detailed description of the records you need
- Any relevant dates or details to help locate the records

- A copy of your identification (if required by the agency)
  - A request for expedited processing (if time-sensitive, such as for an appeal)
3. Submit the Request:  
Send the request via certified mail, email (if allowed), or through the agency's designated online portal to ensure proof of submission.
4. Agency Response:
- The agency must acknowledge receipt of your request.
  - They must provide access to the requested documents within a reasonable period (typically 20-30 days).
  - If the agency denies your request, they must provide a written explanation and information on how to appeal the denial.
5. Appeal a Denial (5 U.S.C. § 552a(f)(4)):
- If your request is denied or only partially fulfilled, you have the right to appeal within the agency.
  - After exhausting the agency's appeal process, you can seek judicial review in federal district court.

## Federal Employment Law Resources

Navigating the federal employment appeal process can be complex. Below is a comprehensive directory of resources, including official websites, legal directories, and attorney listings, to assist federal employees:

### Official Government Resources:

- Merit Systems Protection Board (MSPB)  
Adjudicates federal employee appeals on personnel actions, with detailed guidance on filing appeals.  
[www.mspb.gov](http://www.mspb.gov)
- Office of Personnel Management (OPM) – Employee Rights & Appeals  
Provides information on employee rights, classification appeals, and retirement benefits.  
[www.opm.gov](http://www.opm.gov)
- Equal Employment Opportunity Commission (EEOC)  
Outlines the complaint and appeals process for federal employees facing discrimination.  
[www.eeoc.gov](http://www.eeoc.gov)
- Office of Special Counsel (OSC)  
Investigates whistleblower complaints and prohibited personnel practices.  
[www.osc.gov](http://www.osc.gov)
- U.S. Court of Appeals for the Federal Circuit  
Hears appeals from MSPB decisions.  
[www.cafc.uscourts.gov](http://www.cafc.uscourts.gov)
- Federal Labor Relations Authority (FLRA)  
Provides information on labor-management relations in the federal sector.  
[www.flra.gov](http://www.flra.gov)
- Federal Mediation and Conciliation Service (FMCS)  
Offers mediation services for federal employment disputes.  
[www.fmcs.gov](http://www.fmcs.gov)
- U.S. Department of Labor – Veterans' Employment and Training Service (VETS)  
Assists veterans with employment-related issues, including USERRA claims.  
[www.dol.gov/vets](http://www.dol.gov/vets)

- Code of Federal Regulations (eCFR)  
Provides access to all C.F.R. provisions, including MSPB and federal employment rules.  
[www.ecfr.gov](http://www.ecfr.gov)

### **Legal Directories:**

- National Employment Lawyers Association (NELA)  
Find attorneys specializing in employment law across the U.S.  
[www.nela.org](http://www.nela.org)
- Workplace Fairness Attorney Directory  
Search for lawyers representing workers in employment cases.  
[www.workplacefairness.org](http://www.workplacefairness.org)
- Justia Lawyer Directory  
Comprehensive list of employment lawyers with profiles and contact info.  
[lawyers.justia.com](http://lawyers.justia.com)
- Super Lawyers Directory  
Search top-rated employment and labor attorneys by location and practice area.  
[www.superlawyers.com](http://www.superlawyers.com)
- Avvo Employment Lawyer Directory  
Find employment attorneys with user reviews and ratings.  
[www.avvo.com](http://www.avvo.com)
- FindLaw Federal Employment Lawyers Directory  
Directory of attorneys specializing in federal employment law.  
[lawyers.findlaw.com](http://lawyers.findlaw.com)

### **Specialized Federal Employment Law Firms:**

- The Federal Practice Group  
Specializes in MSPB, EEOC, OSC cases, and other federal employment matters.  
[www.fedpractice.com](http://www.fedpractice.com)
- Tully Rinckey PLLC  
Nationally recognized for federal employment law representation.  
[www.tullylegal.com](http://www.tullylegal.com)
- Kalijarvi, Chuzi, Newman & Fitch, P.C.  
Focused on federal employee rights and litigation.  
[www.kcnlaw.com](http://www.kcnlaw.com)

- The Devadoss Law Firm, P.L.L.C.  
Specializes in federal employment law nationwide.  
[www.fedemploymentlaw.com](http://www.fedemploymentlaw.com)
- Alan Lescht & Associates, P.C.  
Represents federal employees in discrimination, disciplinary, and employment disputes.  
[www.dcmplemploymentattorney.com](http://www.dcmplemploymentattorney.com)

### **Local Firms Specializing in Federal Employment Law:**

- Local Bar Associations  
Search your local bar association website for attorneys specializing in federal employment law.

### **Support and Advocacy Organizations:**

- Pro Bono Net  
Connects individuals with pro bono legal assistance, including employment law matters.  
[www.probono.net](http://www.probono.net)
- American Bar Association (ABA) – Section of Labor and Employment Law  
Offers resources and legal information on labor and employment law.  
[www.americanbar.org](http://www.americanbar.org)
- Federal Employment Law Training Group (FELTG)  
Provides training, webinars, and resources on federal employment law topics.  
[www.feltg.com](http://www.feltg.com)
- The Partnership for Public Service  
Advocates for effective government and supports federal employees through resources and training.  
[www.ourpublicservice.org](http://www.ourpublicservice.org)
- National Whistleblower Center  
Offers resources and legal support for whistleblowers in the federal workforce.  
[www.whistleblowers.org](http://www.whistleblowers.org)

### **Key Publications and Guides:**

- *A Guide to MSPB Law and Practice* by Peter Broida  
A comprehensive resource on MSPB procedures and case law.  
<https://deweypub.com/store/24MSPB.html>

- *The Federal Employee's Legal Survival Guide* by the American Federation of Government Employees (AFGE)  
A detailed manual on federal employment rights and legal remedies.  
[Federal Employees Legal Survival Guide How To Protect & Enforce Your Job Rights 2nd Edition.](#)
- *MSPB Case Reports* (Updated regularly on MSPB.gov)  
Summaries of significant MSPB decisions that can serve as references for your case. <https://www.mspb.gov/decisions/casereports.htm>

### **Online Forums and Discussion Groups:**

- Reddit – r/fednews and r/federalemployees  
Communities where federal employees share advice, experiences, and resources.  
[www.reddit.com/r/fednews](http://www.reddit.com/r/fednews)  
[www.reddit.com/r/federalemployees](http://www.reddit.com/r/federalemployees)
- GovLoop  
A social network for government employees with resources, training, and peer support.  
[www.govloop.com](http://www.govloop.com)
- FedSmith  
Provides news, articles, and advice on federal employment issues.  
[www.fedsmith.com](http://www.fedsmith.com)

### **Sample Legal Forms and Templates:**

- MSPB Appeal Form (Form 185) – Available at [www.mspb.gov/forms](http://www.mspb.gov/forms)

### **Useful Tools:**

- MSPB e-Appeal Online System – File and manage your MSPB appeal electronically.  
<https://e-appeal.mspb.gov>
- FOIA.gov – Submit Freedom of Information Act requests for relevant agency documents.  
[www.foia.gov](http://www.foia.gov)
- USA.gov – Federal Employee Resources – Centralized information on federal employment rights and benefits.  
[www.usa.gov/federal-employees](http://www.usa.gov/federal-employees)

# Sample Forms

## SAMPLE APPEAL LETTER (NON-PROBATIONARY EMPLOYEE)

[Date]

Merit Systems Protection Board (or appropriate agency authority)  
[Agency or MSPB Regional Office Address]  
[City, State, ZIP Code]

Subject: Appeal of [Termination/Suspension/Demotion/Adverse Action] –  
[Your Name]

Dear [Appropriate Official/Board Members],

I am writing to formally appeal the [termination/suspension/demotion/adverse action] taken against me by [agency name], effective on [date of action]. As a federal employee who has completed my probationary period, I am exercising my appeal rights under the Civil Service Reform Act of 1978 and applicable Merit Systems Protection Board (MSPB) regulations.

### BACKGROUND

I have been employed as a [your position] in the [department/office] of [agency name] since [start date], having successfully completed my probationary period on [date]. During my tenure, I have consistently performed my duties and received [positive evaluations/commendations/training].

### GROUND FOR APPEAL

[EXAMPLES]:

- Procedural Error: The adverse action taken against me did not comply with the procedural requirements set forth in 5 U.S.C. §§ 7511-7514, including proper notice, opportunity to respond, or other due process violations.
- Lack of Just Cause: The charges or reasons cited for the action are not supported by the evidence or are based on incorrect information.
- Discrimination or Retaliation: I believe this action was influenced by [discrimination based on protected characteristics such as race, gender, age, disability, etc., or retaliation for whistleblowing, union activity, or other protected activity].

### SUPPORTING EVIDENCE

Attached are documents supporting my appeal, including performance appraisals, communications with supervisors, witness statements, and other relevant materials.

### LEGAL BASIS

This appeal is filed pursuant to 5 U.S.C. § 7701, which provides employees with the right to challenge adverse personnel actions before the MSPB. My appeal is also supported by [reference relevant statutes, regulations, or case law, if applicable].

### REQUEST FOR RELIEF

I respectfully request that the adverse action be rescinded, that I be reinstated to my position with full back pay and benefits, and that my personnel record be corrected to reflect this outcome. Additionally, I request an appeal hearing to present my case in person.

Thank you for your attention to this matter. I look forward to your response and a fair resolution of this appeal.

Sincerely,  
[Your Full Name]  
[Your Position]  
[Agency Name]  
[Email Address]  
[Phone Number]

*Enclosure:*  
Copy of Adverse Action Notice  
Performance Evaluations  
Correspondence with Supervisors  
Witness Statements  
Other Supporting Documents

## SAMPLE APPEAL LETTER (PROBATIONARY EMPLOYEE)

[Date]

[Agency Name]

[Office of Human Resources or Appropriate Appeal Authority]

[Agency Address]

[City, State, ZIP Code]

Subject: Appeal of [Termination/Removal/Adverse Action] – [Your Name]

Dear [Appropriate Official or Board],

I am writing to formally appeal the [termination/removal/adverse action] taken against me on [date of action] while I was serving in my probationary period as a [your position] with [agency name].

I believe that this action was [unjustified/improperly executed], and I am exercising my right to appeal under applicable federal regulations.

### BACKGROUND

I was hired as a [your position] in the [department/office] on [start date]. During my probationary period, I consistently performed my duties, received [positive feedback/training], and adhered to all agency standards.

### GROUND FOR APPEAL

[EXAMPLES]:

- Violation of Procedural Requirements: The termination was issued without proper notice or adherence to procedural safeguards.
- Discrimination/Retaliation: I believe this action was taken in retaliation for [reporting an issue, whistleblowing, etc.] or due to discrimination based on [race, gender, age, etc.].
- Lack of Performance Justification: My performance during the probationary period did not warrant termination, as evidenced by [performance evaluations, supervisor feedback, or other documentation].

### SUPPORTING EVIDENCE

I have attached relevant documents, including performance evaluations, correspondence with supervisors, and any other supporting materials, to substantiate my appeal.

### REQUEST FOR RELIEF

I respectfully request that this action be reviewed and reversed, and that I be reinstated to my position. Alternatively, I seek an opportunity to respond in person during an appeal hearing.

Thank you for your attention to this matter. I look forward to your response and appreciate your consideration of my appeal.

Sincerely,  
[Your Full Name]  
[Your Position]  
[Agency Name]  
[Email Address]  
[Phone Number]

*Enclosure:*

Copy of Adverse Action Notice  
Performance Evaluations  
Correspondence with Supervisors  
Other Supporting Documents

## SAMPLE PRIVACY ACT REQUEST

[Date]

Privacy Act Officer  
[Agency Name]  
[Agency Address]  
[City, State, ZIP Code]

Subject: Privacy Act Request for Access to Personnel Records

Dear Privacy Act Officer,

Pursuant to the Privacy Act of 1974, 5 U.S.C. § 552a, I am formally requesting access to and copies of all records maintained by [Agency Name] that pertain to my employment. I am currently (or was) employed as a [Your Position] within [Department/Office], and my employment began on [Start Date].

I specifically request the following records:

- My Official Personnel Folder (OPF);
- All performance evaluations, progress reports, and feedback provided during my probationary period;
- All emails, memos, or communications related to my performance or conduct during my probationary period;
- Any records related to disciplinary actions, investigations, or adverse personnel actions involving me; and
- Training records, awards, or commendations during my employment.

If additional records exist that are relevant to my employment or any personnel actions taken, I kindly request access to those as well.

I am requesting this information for the purpose of reviewing my employment records in connection with a potential appeal of an adverse action taken against me. Given the time-sensitive nature of this request, I ask that you process it as expeditiously as possible.

Attached is a copy of my identification for verification purposes. I am happy to provide any additional information needed to facilitate this request.

Please acknowledge receipt of this request and inform me of the expected timeframe for processing. If any portion of my request is denied, please provide the specific reasons for the denial and inform me of the appeal procedures available.

Thank you for your assistance and attention to this matter.

Sincerely,  
[Your Full Name]  
[Your Position]  
[Agency Name]  
[Email Address]  
[Phone Number]

## Frequently Asked Questions (FAQs)

### **What is considered an adverse action?**

An adverse action includes disciplinary measures such as removal, suspension of more than 14 days, reduction in grade or pay, or furlough of 30 days or less.

### **What are my appeal rights as a probationary vs. non-probationary employee?**

Probationary employees have limited appeal rights, typically for cases involving discrimination or procedural violations. Non-probationary employees have broader appeal rights under MSPB jurisdiction.

### **How long does the MSPB appeal process typically take?**

The initial appeal process usually takes around 120 days, but it can extend if there are delays, discovery processes, or petitions for review.

### **What happens if I miss my appeal deadline?**

Missing the 30-day deadline can result in dismissal of your appeal. Extensions are rare and granted only under exceptional circumstances.

### **Can I represent myself during the appeal process?**

Yes, you can represent yourself, but it is advisable to seek legal counsel to ensure your rights are protected.

### **What documents are needed for my appeal?**

Key documents include the appeal form, cover letter, written appeal statement, supporting evidence (such as agency decision letters and personnel records), and any legal references.

### **Can I request an extension for submitting documents after filing?**

Yes, but you must file a written request with MSPB showing good cause for the extension.

### **What is the role of the agency during the appeal process?**

The agency must submit its records of the action, respond to your appeal, and participate in hearings if required.

### **What is the MSPB's e-Appeal system, and how do I use it?**

The e-Appeal system is an online platform for filing and managing MSPB appeals. You can use it to submit documents, track case status, and communicate with the Board. Visit <https://e-appeal.mspb.gov> to create an account and begin the process.

### **Can I request a change of venue for my hearing?**

Yes, you can file a motion requesting a change of venue, but you must demonstrate good cause, such as travel difficulties, witness availability, or personal hardship.

**What if I miss the deadline to file my appeal?**

Missing the deadline may result in dismissal of your appeal. However, you can request a waiver by showing good cause, such as illness, unforeseen circumstances, or incorrect information provided by the agency.

**How do I file a motion during my MSPB appeal?**

You can file a motion by submitting a written request to the Administrative Judge handling your case. Include your case number, the relief you are seeking, and the reasons supporting your motion.

**What happens if the agency fails to respond to my discovery requests?**

If the agency fails to respond, you can file a Motion to Compel, asking the MSPB to order the agency to produce the requested documents or information.

**Can I amend my appeal after filing it?**

Yes, you may request to amend your appeal, but you must do so within the timeframe allowed by the MSPB and show that the amendment is necessary due to newly discovered evidence or other valid reasons.

**How do I request a subpoena for witnesses or documents?**

Submit a written request to the Administrative Judge specifying the witnesses or documents you need and explaining why they are relevant to your case.

**What should I expect during an MSPB hearing?**

MSPB hearings are similar to trials but less formal. Both sides present evidence, question witnesses, and make arguments. An Administrative Judge oversees the hearing and issues a decision based on the evidence.

**How can I challenge evidence presented by the agency?**

You can file motions to exclude evidence, object during hearings, and present counter-evidence to challenge the agency's claims.

**Are there costs associated with filing an MSPB appeal?**

No, there is no filing fee for an MSPB appeal. However, you may incur costs for legal representation, obtaining documents, and other case-related expenses.

**What is a status conference, and do I have to attend?**

A status conference is a meeting (often by phone or video) with the Administrative Judge to discuss case progress, deadlines, and any preliminary issues. Attendance is mandatory unless excused by the judge.

**Can I settle my case before the hearing?**

Yes, settlement discussions can happen at any stage. The MSPB encourages Alternative Dispute Resolution (ADR) to resolve cases without a full hearing.

**What happens if I win my appeal?**

If you win, the agency may be ordered to reinstate you, provide back pay, correct your personnel records, or take other corrective actions as appropriate.

**What if the agency refuses to comply with an MSPB order?**

If the agency fails to comply, you can file a petition for enforcement with the MSPB, asking the Board to enforce its decision.

**Can I appeal a final MSPB decision to another court?**

Yes, you can appeal a final MSPB decision to the U.S. Court of Appeals for the Federal Circuit within 60 days, or to any competent circuit court in whistleblower cases under the All-Circuit Review Act.

**What is the role of the Office of Special Counsel (OSC) in MSPB cases?**

The OSC investigates complaints of prohibited personnel practices, including whistleblower retaliation, and may prosecute cases before the MSPB if it finds merit in the employee's claims.

**What is a mixed case appeal?**

A mixed case appeal involves both a personnel action and a discrimination claim. Such cases may be appealed to the MSPB, with certain discrimination issues possibly being reviewed by the EEOC.

**Can I submit new evidence after the hearing?**

Generally, new evidence cannot be submitted after the hearing unless you can show that it was not available despite due diligence during the hearing process.

**How do I request transcripts of my MSPB hearing?**

You can request transcripts from the MSPB Clerk's Office, but you may be responsible for the associated costs.

**What are the common defenses in an MSPB appeal?**

Common defenses include lack of just cause, procedural errors, discrimination, retaliation, disparate treatment, and violations of merit system principles.

## Glossary of Key Terms

### *Adverse Action*

A negative employment decision, such as removal, suspension, demotion, or furlough.

### *Administrative Judge (AJ)*

An official assigned by the MSPB to preside over appeals, conduct hearings, and issue initial decisions.

### *Administrative Record*

The complete set of documents, evidence, and pleadings filed in an MSPB case.

### *Affidavit*

A sworn written statement used as evidence during proceedings.

### *Agency Representative*

The individual or attorney representing the employing federal agency in an MSPB appeal.

### *Alternative Dispute Resolution (ADR)*

Methods such as mediation to resolve disputes without a formal hearing.

### *Amended Appeal*

A revised version of an original appeal, submitted when new facts or claims arise.

### *Appeal Deadline*

The mandatory time frame within which an appeal must be filed, typically 30 days from the effective date of the adverse action.

### *Appeal Form (Form 185)*

The official form used to file an appeal with the MSPB.

### *Burden of Proof*

The responsibility to prove the facts of a case, often resting on the agency for adverse actions.

### *Certificate of Service*

A formal statement confirming that documents have been served to the opposing party.

### *Continuance*

A request for the postponement of a hearing or deadline.

*Cross Petition for Review*

A response filed by the opposing party after a petition for review has been submitted.

*Decision Notice*

An agency's formal written notice informing an employee of an adverse action and their appeal rights.

*Discovery*

The pre-hearing phase where both parties exchange documents, information, and witness lists.

*Due Process*

Legal rights ensuring that employees are given notice and an opportunity to respond before an adverse action is finalized.

*Electronic Filing (e-Appeal)*

MSPB's online system for submitting and managing appeals electronically.

*Evidence*

Any material, such as documents or witness testimony, used to support or refute a claim in an appeal.

*Ex Parte Communication*

Any communication with the MSPB judge without including the opposing party, which is prohibited.

*Final Order*

The conclusive decision by the MSPB, which can be appealed to a higher court.

*Good Cause*

A valid reason for requesting an extension or deviation from procedural rules.

*Hearing*

A formal proceeding where both parties present evidence and arguments before an Administrative Judge.

*Initial Decision*

The first ruling by an MSPB Administrative Judge, which can be appealed through a Petition for Review.

*Interlocutory Appeal*

An appeal of a ruling made during the course of an MSPB proceeding, before a final decision is reached.

### *Interrogatories*

Written questions submitted by one party to the other during discovery, which must be answered under oath.

### *Jurisdiction*

The authority of the MSPB to hear and decide an appeal.

### *Merit Systems Protection Board (MSPB)*

An independent federal agency that adjudicates appeals of adverse employment actions within the federal civil service.

### *Merit System Principles*

The foundational principles of federal employment, including fair treatment, equal pay, and protection from arbitrary actions.

### *Mixed Case Appeal*

An appeal involving both a personnel action and a discrimination claim, handled by both the MSPB and EEOC.

### *Motion*

A formal written request to the MSPB, such as a motion for extension, dismissal, or discovery.

### *Notice of Proposed Action*

A formal notification issued by an agency before taking an adverse employment action.

### *Official Personnel Folder (OPF)*

An employee's official employment record maintained by their federal agency.

### *Order*

A directive issued by an MSPB Administrative Judge requiring a party to take certain actions.

### *Petition for Enforcement*

A request to the MSPB to ensure compliance with its orders after a decision is issued.

### *Petition for Review (PFR)*

A formal request for the full MSPB Board to review an Administrative Judge's initial decision.

### *Pre-Hearing Conference*

A meeting between the Administrative Judge and parties to discuss issues, deadlines, and hearing procedures.

*Prima Facie Case*

The initial evidence presented by a party that establishes a case unless contradicted by the opposing party.

*Prohibited Personnel Practices*

Employment actions that violate federal law, including discrimination, retaliation, nepotism, and coercion.

*Pro Se*

Representing oneself in legal proceedings without an attorney.

*Record of Proceedings*

The official collection of all documents, evidence, and transcripts from an MSPB appeal.

*Remand*

An order from the MSPB returning a case to an Administrative Judge for further review or action.

*Representative*

An attorney, union representative, or other qualified person representing a party in an MSPB appeal.

*Sanction*

A penalty imposed for failing to comply with MSPB rules or orders.

*Settlement Agreement*

A contract between the employee and agency resolving the appeal without further litigation.

*Standing*

The legal right of a party to bring an appeal before the MSPB.

*Statutory Deadline*

A legally defined time limit within which certain actions must be taken during an appeal.

*Subpoena*

A legal order requiring a person to testify or produce documents for a hearing.

*Supplemental Pleading*

Additional filings made after the initial appeal submission to address new issues or evidence.

*Suspension*

A temporary removal from duty without pay as an adverse action subject to appeal.

*Transcript*

The official written record of all spoken proceedings during an MSPB hearing.

*USERRA (Uniformed Services Employment and Reemployment Rights Act)*

A law protecting the employment rights of individuals who serve in the military.

*Veterans Employment Opportunities Act (VEOA)*

A law providing employment preferences and rights to eligible veterans in federal service.

*Whistleblower Protection Act (WPA)*

Legislation protecting federal employees from retaliation for reporting waste, fraud, or misconduct.

*Witness List*

A list of individuals who will testify during a hearing, submitted before the hearing date.

*Written Notice*

A formal document provided by the agency to an employee regarding disciplinary action, including the reasons and appeal rights.

## Appendix of Relevant Statutes and Regulations

This appendix provides a comprehensive list of key statutes and regulations relevant to federal employment appeals, including citations and brief descriptions of each provision.

### Federal Statutes:

#### *Civil Service Reform Act of 1978 (CSRA)*

- **5 U.S.C. §§ 2301-2302** – Establishes the merit system principles and defines prohibited personnel practices, including discrimination, nepotism, and retaliation.
- **5 U.S.C. § 7701** – Outlines the procedures for federal employees to appeal adverse actions to the MSPB.

#### *Merit Systems Protection Board Statute*

- **5 U.S.C. § 1201** – Establishes the MSPB as an independent agency responsible for adjudicating appeals from federal employees.

#### *Whistleblower Protection Act of 1989 (WPA)*

- **5 U.S.C. § 2302(b)(8)** – Protects federal employees from retaliation for disclosing evidence of misconduct, such as violations of law, gross mismanagement, or waste of funds.
- **5 U.S.C. § 1214** – Grants authority to the Office of Special Counsel to investigate whistleblower complaints and represent employees before the MSPB.

#### *Veterans Employment Opportunities Act of 1998 (VEOA)*

- **5 U.S.C. § 3330a** – Provides employment rights and appeal procedures for veterans, including the right to challenge violations of veterans' preference in federal employment.

#### *Uniformed Services Employment and Reemployment Rights Act (USERRA)*

- **38 U.S.C. §§ 4301-4335** – Protects the employment and reemployment rights of individuals who serve in the military, with appeals handled by the MSPB.

#### *Equal Employment Opportunity Laws*

- **42 U.S.C. § 2000e-16** – Prohibits discrimination in federal employment based on race, color, religion, sex, or national origin (Title VII of the Civil Rights Act of 1964).
- **29 U.S.C. § 633a** – Prohibits age discrimination in federal employment under the Age Discrimination in Employment Act (ADEA).

### *Family and Medical Leave Act of 1993 (FMLA)*

- **29 U.S.C. §§ 2611-2619** – Provides federal employees with rights to unpaid leave for family and medical reasons, with appeal rights in case of violations.

### **Code of Federal Regulations (C.F.R.):**

#### *Merit Systems Protection Board Regulations*

- **5 C.F.R. Part 1201** – Provides general procedures for MSPB appeals, including filing requirements, discovery, hearings, and decisions.
- **5 C.F.R. § 1201.24** – Lists the requirements for filing an appeal with the MSPB.
- **5 C.F.R. § 1201.115** – Outlines the standards for filing a petition for review of an initial MSPB decision.

#### *Whistleblower Protection Regulations*

- **5 C.F.R. Part 1209** – Establishes MSPB procedures for handling individual right of action (IRA) appeals involving whistleblower retaliation claims.

#### *Veterans Employment Regulations*

- **5 C.F.R. Part 1208** – Covers MSPB procedures for handling appeals under USERRA and VEOA.

#### *Privacy Act Regulations*

- **5 C.F.R. § 293.105** – Outlines procedures for federal employees to access and request corrections to their personnel records under the Privacy Act.

### **Executive Orders:**

*Executive Order 11478* – Prohibits discrimination in federal employment and establishes equal employment opportunity policies.

*Executive Order 12968* – Sets standards for access to classified information, relevant in certain security clearance-related employment cases.

### **Key MSPB Decisions and Case Law:**

#### *Douglas v. Veterans Administration, 5 M.S.P.R. 280 (1981)*

Establishes the “Douglas Factors,” which guide the MSPB in determining the appropriateness of disciplinary actions.

#### *Carr v. Social Security Administration, 185 F.3d 1318 (Fed. Cir. 1999)*

Clarifies the burden of proof in whistleblower retaliation cases under the WPA.

#### *Parker v. Department of Housing and Urban Development, 106 M.S.P.R. 329 (2007)*

Provides guidance on MSPB’s jurisdiction over USERRA appeals.

## **Additional Resources:**

- **Merit Systems Protection Board Official Website** – [www.mspb.gov](http://www.mspb.gov)  
Access official forms, filing instructions, decisions, and updates on MSPB rules.
- **Office of Special Counsel** – [www.osc.gov](http://www.osc.gov)  
Resource for whistleblower protection complaints and guidance.
- **Equal Employment Opportunity Commission (EEOC)** – [www.eeoc.gov](http://www.eeoc.gov)  
Guidance on filing discrimination complaints and appeal procedures.
- **Federal Labor Relations Authority (FLRA)** – [www.flra.gov](http://www.flra.gov)  
Information on labor-management relations in the federal sector.
- **Code of Federal Regulations** – [www.ecfr.gov](http://www.ecfr.gov)  
Access to all C.F.R. provisions, including those related to MSPB procedures and federal employment laws.