OMB No. 3124-0009

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 MSPB (the Board)'s legal authority (jurisdiction) 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 the Board has jurisdiction can be found in the Board's regulations at **5 C.F.R. § 1201.3**. The administrative judge assigned to your case will determine whether the Board has jurisdiction over the particular circumstances of your appeal.

Where to Obtain Additional Information

Much more information about the adjudication of appeals before the MSPB, including the Board's regulations, may be found at the Board's website: **www.mspb.gov**. The Board'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

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. If you are appealing an expedited removal or transfer from the SES at the Veterans Administration, your time limit is **7 calendar days** and cannot be extended. (Please note that Individual Right of Action (IRA), Uniformed Services Employment and Reemployment Rights (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.**

Where to File an Appeal

You must file your appeal of the agency's action or decision with the Board'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 (OPM), you must file your appeal with the Board'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, see **Appendix B**.

Attachments

Please submit only the attachments requested in this form. 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)**.

If you prefer to file your appeal electronically, please visit MSPB e-Appeal Online — https://e-appeal.mspb.gov

PART 1 - Appellant and Agency Information

Everyone must complete Part 1.

Please type or print legibly.

1. Name *(last, first, middle)*

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 E-Mail Address*

You must promptly notify the Board in writing of any change in your telephone number(s) or e-mail address while your appeal is pending.

Home: _____ Work: _____ Fax: _____ Cell: _____

e-Mail 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: _____

City: _____ State: _____ Zip Code: _____ Phone Number: _____

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.)

- ☐ VA SES Removal from civil service
- ☐ Removal (termination after completion of probationary or initial service period)
- ☐ Termination during probationary or initial service period
- ☐ Reduction in grade, pay, or band
- ☐ Suspension for more than 14 days
- ☐ Failure to restore/reemploy/reinstate or improper restoration/reemployment/reinstatement
- ☐ Negative suitability determination
- ☐ VA SES Transfer to general schedule
- ☐ Involuntary resignation
- ☐ Involuntary retirement
- ☐ Denial of within-grade increase
- ☐ Furlough of 30 days or less
- ☐ Separation, demotion or furlough for more than 30 days by reduction in force (RIF)
- ☐ Other action (describe):

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 *(MM/DD/YYYY):*

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 processing (CSA or CSF) number 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 e-mail address*

Office:

Fax: Other:

e-Mail 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)*

Privacy Act Statement

This form requests personal information that is relevant and necessary to reach a decision in your appeal. The Merit Systems Protection Board collects this information in order to process appeals under its statutory and regulatory authority. Because your appeal is a voluntary action, you are not required to provide any personal information to the Merit Systems Protection Board in connection with your appeal. Conceivably, failure to provide all information essential to reaching a decision in your case could result in the dismissal or denial of your appeal.

Decisions of the Merit Systems Protection Board are available to the public under the provisions of the Freedom of Information Act and are posted to the Merit Systems Protection Board's public website. Some information about the appeal also is used in depersonalized form for statistical purposes. Finally, information from your appeal file may be disclosed as required by law under the provisions of the Freedom of Information Act and the Privacy Act.
See 5 U.S.C. §§ 552, 552a.

Public Reporting Burden

The public reporting burden for this collection of information is estimated to vary from 20 minutes to 4 hours, with an average of 60 minutes per response, including time for reviewing the form, searching existing data sources, gathering the data necessary, and completing and reviewing the collection of information. 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, N.W., Washington, DC 20419 or by e-mail to mspb@mspb.gov.

APPENDIX A

ADDITIONAL CLAIMS

Harmful Procedural 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. § 1201.56(c)(3)**.

Prohibited Personnel Practices: 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 EEO activity. *See* **5 U.S.C § 2302(b)(1)** and **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 exercise of the right to appeal, complain, or grieve an alleged violation of Subsection **(b)(8)**; for testifying or otherwise lawfully assisting another's right to appeal, complain, or grieve such an alleged violation; for cooperating with or disclosing information to the Inspector General or Special Counsel in accordance with applicable provisions of law; or for refusing to obey an order that would require a violation of law. *See* **5 C.F.R. § 1209.4(b).**
- **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 a right, other than with regard to remedying an alleged violation of **5 U.S.C. § 2302(b)(8)**, such as the filing of an appeal, complaint, or grievance.

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. § 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. § 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 the MSPB (*See* **5 C.F.R. § 1201.3(a)** for a list of 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 the Uniformed Services Employment and Reemployment Rights Act (USERRA) pursuant to **38 U.S.C. § 4324**; and appeals under the Veterans Employment Opportunities Act (VEOA) pursuant to **5 U.S.C. § 3330a**.

Note: As previously set forth, 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 the Board.

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 because an individual exercised the right to appeal, complain, or grieve an alleged violation of Subsection (b)(8); testified or otherwise lawfully assisted another's right to appeal, complain, or grieve such an alleged violation; cooperated with or disclosed information to the Inspector General or Special Counsel in accordance with applicable provisions of law; or refused to obey an order that would require a violation of law. *See* **5 C.F.R. § 1209.4**. If the personnel action allegedly taken in reprisal for making a protected disclosure or engaging in protected activity is not otherwise appealable to the Board, 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 the Board 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. § 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 the Board. However, if you first file a USERRA complaint with DOL, you must exhaust DOL procedures before you may file an appeal with the Board. *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 his or her rights under any statute or regulation relating to veterans' preference. *See* **5 C.F.R § 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 the Board.

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 Office of Special Counsel (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 the Department of Labor (DOL) first, you must exhaust the procedures of DOL before you may file an appeal with the Board.

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

Formal EEO Complaints. If you have previously filed a formal Equal Employment Opportunity (EEO) complaint regarding the same matter, you must file your Board 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
Tel No.: (404) 730-2751; Fax No.: (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
Tel No.: (312) 353-2923; Fax No.: (312) 886-4231
Geographic Area: Illinois; Indiana; Iowa; Kansas City, Kansas; Kentucky; Michigan; Minnesota; Missouri; Ohio; and Wisconsin.

Dallas Regional Office: 1100 Commerce Street, Room 620, Dallas, TX 75242-9979
Tel. No.: (214) 767-0555; Fax No.: (214) 767-0102
Geographic Area: Arkansas; Louisiana; Oklahoma; and Texas.

Denver Field Office: 165 South Union Blvd., Suite 318, Lakewood, CO 80228-2211
Tel. No.: (303) 969-5101; Fax No.: (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
Tel. No.: (212) 264-9372; Fax No.: (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
Tel. No.: (215) 597-9960; Fax No.: (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
Tel. No.: (703) 756-6250; Fax No.: (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: 201 Mission Street, Suite 2310, San Francisco, CA 94105-1831
Tel. No.: (415) 904-6772; Fax No.: (415) 904-0580
Geographic Area: Alaska; California; Hawaii; Idaho; Nevada; Oregon; Washington; and Pacific overseas.