

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

### **About the Merit Systems Protection Board**

At Tully Rinckey PLLC, it is our belief that every federal employee has the right to due process and a fair hearing, including proper application of the Douglas

Factors. Any disciplinary action can lead to greater problems in the future and, in extreme cases, can result in the end of an employee's career in federal service. The attorneys at Tully Rinckey PLLC have litigated hundreds of cases at the agency level, before MSPB administrative judges, as well as before the full three-member MSPB panel. If necessary, our attorneys are also experienced and have been successful in arguing appeals of MSPB decisions before the U.S. Court of Appeals for the Federal Circuit. Contact Tully Rinckey PLLC to see how we may assist with your case. We can be reached 24 hours a day, 7 days a week, at 202-787-1900

or by e-mail at [info@fedattorney.com](mailto:info@fedattorney.com)

#### **.About the Merit Systems Protection Board**

The U.S. Merit Systems Protection Board is an independent, quasi-judicial agency in the Executive Branch that serves as the guardian of federal merit system principles. The Board, which is made up of three members appointed by the president and confirmed by the Senate, is responsible for: Adverse actions

over which the Board has jurisdiction, such as removals, suspensions of 15 days or more, furloughs of 30 days or less, demotions, and certain reductions in pay.

Administrative decisions affecting an individual's rights or benefits under the Civil Service Retirement System or the Federal Employees' Retirement System.

Appeals filed under the Whistleblower Protection Act

, the Uniformed Services Employment and Reemployment Rights Act (USERRA

), and the Veterans' Employment Opportunities Act (VEOA)

.  
Cases brought by the Office of Special Counsel (OSC), including complaints of prohibited personnel practices (PPP), corrective actions, and Hatch Act violations.

Requests to review regulations of the Office of Personnel Management that are alleged to require or result in the commission of a prohibited personnel practice.

Ordering compliance with final MSPB orders and settlement agreements where appropriate.

The MSPB typically does not handle discrimination cases. This responsibility primarily belongs to the U.S. Equal Employment Opportunities Commission (EEOC)

. However, where an adverse employment action otherwise within the jurisdiction of the MSPB, for example a removal, is alleged to have been based on prohibited discrimination, the MSPB can provide full relief in that affirmation defense claim, including the award of compensatory damages. This is referred to as a mixed case appeal. The MSPB will not provide advice or guidance on employment, examinations or benefits. This responsibility belongs to the Office of Personnel Management (OPM). Additionally, the MSPB will not investigate prohibited personnel practices (PPP). This is the responsibility of the Office of Special Counsel (OSC). Tully Rinckey PLLC is available to represent you and to prosecute your PPP complaint before the OSC. To learn more about the MSPB appeals process when facing discipline in the federal workplace, download Tully Rinckey PLLC's free MSPB Guidebook

. To schedule a consultation with a Tully Rinckey PLLC attorney, call us at 202-787-1900 or by e-mail at [info@fedattorney.com](mailto:info@fedattorney.com)

## **.The Douglas Factors**

An agency's decision to take disciplinary or adverse action against a federal employee must consider a set of standards referred to as the Douglas Factors. On appeal, the MSPB will review those factors to determine if the agency gave them appropriate consideration in determining severity of discipline imposed. There are twelve Douglas

Factors. Generally, not all twelve are relevant to any given case, but those that are relevant must be considered in determining whether to impose discipline against a Federal employee and, if so, the level of that discipline. The full list of factors is as follows: Nature and seriousness of the offense

Employee's job level and type of employment

Employee's past disciplinary record

Employee's past work record

Effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon a supervisor's confidence in the employee's ability to perform assigned duties

Consistency of the penalty with those imposed upon other employees for the same or similar offenses

Consistency of the penalty with the agency's a table of offenses

Notoriety of the offense or its impact upon the reputation of the agency

Clarity of the offense, that is whether the employee was on notice of the rule(s) allegedly violated

Potential for rehabilitation

Mitigating circumstances

Adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others

## **Tough Aggressive Representation**

At Tully Rinckey, it is our belief that every federal employee has the right to due process and a fair hearing, including proper application of the Douglas Factors. Any disciplinary action can lead to greater problems in the future and in extreme cases, can result in the end of an employee's career in federal service.&nbsp;

## **Contact Us**

During your initial consultation, an experienced lawyer from Tully Rinckey will review with you the critical facts and applicable law in your case. The attorney will help you identify and carry out a litigation plan. Contact a Tully Rinckey attorney to see how we may assist with your case. We can be reached 24 hours a day, 7 days a week at 202-787-1900 or via email at [info@fedattorney.com](mailto:info@fedattorney.com)