

## **MSPB FAQ**

Who can appeal to the Merit Systems Protection Board (MSPB)?

The following Federal Employees may appeal to the MSPB

:Competitive service employees who have completed their 1-year probationary period.

Excepted service employees, not serving a probationary period or those who have completed 2 years of current continuous service in the same or similar position in a Federal Executive agency.

Veteran's preference eligible employees. There are special rules and time limits to file under VEO, thus you should consult an attorney early in the process.

What types of actions can be brought before the MSPB?

Suspensions over 14 days

USERRA

claims, even if you are in probationary status

VEO

claims, if you previously filed with the Department of Labor first

Removals from federal service

Unfavorable suitability determinations

OPM denials of disability retirement

actions

Individual Rights of Appeals in Whistleblower Retaliation

Cases

Involuntary Retirements

Involuntary Removals

Demotions

Reductions in pay

How can I obtain evidence relative to my case that the agency has in its possession?

Though the discovery process you can obtain relevant evidence that the agency has in its possession.

Filing discovery requests may be critical to your case to obtain the evidence necessary to prove your case.

Strict time frames apply to serving and answering requests and if you fail to comply you may be sanctioned or lose your right obtain evidence critical to your case.

What if the agency refuses to turn over evidence?

You may file a motion to compel and a judge can order the agency to comply or the facts may be deemed to be proven.

What happens after I file my appeal with the MSPB?

You will receive an acknowledgement order, which you must carefully read as it may order you establish certain facts i.e., jurisdiction before the MSPB

, or that you were honorably discharged from the military if you are filing a USERRA or VEOA

claim.

The acknowledgement order will also set various deadlines for discovery, motions, settlement discussions, and initial disclosures. It is critical that you comply with these deadlines or your claim may be dismissed.

Are status conferences and hearings conducted in person?

Status and prehearing conferences are usually not, most can be done over the telephone. However, hearings are usually conducted in person. However, it is up to the Judge to determine whether a hearing will be in person or by video teleconference.

When must you file?

Most appeals to the MSPB

must be filed within 30 days of the effective date of the appealed action.

In USERRA

appeals, there is no time limit to file (See S CFR 1208.12)

Whistleblower

– You must file within 65 days of the date that the Office of Special Counsel (OSC) notifies you that it will not seek corrective action (See 5 CFR 1204.5)

## VEOA

– You must file with the Department of Labor (DOL) and you must give DOL at least 60 days to resolve before you can file a VEOA

case with the MSPB

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Where do I file my MSPB claim?

You must file in the regional office where your duty location is located (See Appendix II of part 1201 of the MSPB

regulations)

What must I file?

The only documents usually required to be filed at the time of the initial appeal filing is the notice of decision to the take action being appealed. Appeal forms are available on the [mspb.gov](http://mspb.gov)

website and you can elect to file your MSPB

appeal electronically.

Should I file my evidence at the time of initial filing with the MSPB?

No, there may be certain tactical advantages to not filing your evidence at this time and instead waiting until discovery is complete or until the judge orders you to file additional evidence such as in an “order to show cause.”

Designating a representative

You may be represented by an attorney to file and prosecute your MSPB

appeal. Deciding whether to hire an attorney is an important decision because your livelihood is at stake. If you decide to be represented by an attorney, you should consider hiring competent, experienced legal counsel who is familiar with MSPB

practice and procedure.

Why should I hire an attorney?

Because your federal government career may be at stake and because an MSPB appeal is a complicated legal process.

Furthermore, many times agencies do not take "Pro Se" or unrepresented appeals very seriously because unrepresented appellants often do not understand the legal process.

Agencies may be more willing to mediate or settle a case if you have competent, experienced counsel who's working aggressively on your case,

How much does Tully Rinckey PLLC charge for MSPB representation?

The process starts with a consultation. Our consults last up to one hour in length and we will evaluate your case to help determine the merits of your claim. We do charge a reduced hourly rate for the consult.

If you decide to retain Tully Rinckey PLLC, we will draft a retainer agreement, which will lay out how the firm will bill your case and the amount of the initial fee advance that is required. In order for us to begin work on your case we must receive the signed retainer back and payment of the initial fee advance.

Tully Rinckey PLLC accepts personal checks and all major credit cards. You also have the ability to pay online.

Will I be able to recover my attorney fees?

If you successfully settle or prevail in your MSPB

appeal, you may receive an award of reasonable attorney fees. It depends on the situation and type of case. You should discuss this with the attorney during the initial consultation. At Tully Rinckey PLLC we always seek to recover attorney fees on behalf of our clients.

What if I lose at the MSPB?

If the judge rules against you in the Board's initial decision, you may file a petition for review to the full Board within 30 days. You also have the right to file a petition to the United States Court of Appeals for the Federal Circuit to review a final decision of the MSPB

The law provides that a decision can be reversed on appeal if the appellant shows harmful error, that the appealed decision was based on a prohibited personnel action or the decision was not within accordance with the law.

What will happen if I win my case?

The agency will have 30 days to appeal the decision. If the agency does not appeal, the Judge will direct the agency to reverse or mitigate the adverse action and restore you to the "status quo ante" on the position you were in before the adverse action.

The judge can also order interim relief.

The judge may also award back pay with interest, benefits, lost leave days, job restoration, and redaction of derogatory information from your file.

In Whistleblower

reprisal, USERRA

or EEO discrimination

appeals, the MSPB

can also award monetary damages.

Your attorney can also file a fee petition to request attorney fees and expenses incurred on your behalf.

Where does the initial consultation occur?

The attorneys at Tully Rinckey can consult with you in person at our K Street office in Washington DC or we can do the consult via phone. Don't put your federal career in jeopardy, contact us today at (202) 787-1900 to set up a consultation.