

# U.S. Merit Systems Protection Board



## Annual Report for Fiscal Year 1998



Submitted to the President and  
the Congress of the United States



**U.S. Merit Systems Protection Board  
Washington, D.C.**

The President  
The President of the Senate  
The Speaker of the House of Representatives

Sirs:

In accordance with 5 U.S.C. § 1206, we are pleased to submit the Twentieth Annual Report of the U.S. Merit Systems Protection Board. The report reviews the significant activities of the Board during fiscal year 1998, including the Federal employee appeals and other cases decided by the Board.

The Board and its regional and field offices closed 10,376 cases during fiscal year 1998. The Board's administrative judges decided 8,442 appeals, stay requests, and addendum cases. The Administrative Law Judge at headquarters issued initial decisions in 15 cases brought by the Special Counsel and proposed agency actions against administrative law judges. The 3-member Board decided 1,887 cases under its appellate jurisdiction, principally petitions for review (PFRs) of its judges' initial decisions. The Board also completed action on 32 cases arising under its original jurisdiction, including Special Counsel cases, actions against administrative law judges, and requests to review regulations of the Office of Personnel Management (OPM).

The average time to process appeals and addendum cases in the regional and field offices was 108 days. The average processing time at Board headquarters for PFRs of initial decisions by judges was 205 days. This means that, on average, a case processed through both levels of the Board was completed in about 10 months. Timely processing is important because most of the cases that come to the Board are appeals of agency personnel actions. Early resolution of these disputes benefits all parties, as well as the taxpayers who fund Government activities.

One important measure of the Board's performance of its statutory mission is the extent to which its decisions are upheld by its principal reviewing court, the U.S. Court of Appeals for the Federal Circuit. Of the 450 final Board decisions reviewed by the court in fiscal year 1998, 92 percent were unchanged by the court's decisions.

The Board also has a statutory responsibility to conduct studies of the merit systems and to review the significant actions of OPM. In fiscal year 1998, the Board issued three reports of such studies.

Respectfully submitted,

Ben L. Erdreich  
Chairman

Beth S. Slavet  
Vice Chairman

Susanne T. Marshall  
Member

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# BOARD MISSION AND JURISDICTION

## MISSION

The U.S. Merit Systems Protection Board (MSPB) was established by the Civil Service Reform Act of 1978 (CSRA), Public Law 95-454, as a successor agency to the Civil Service Commission. It is an independent, quasi-judicial agency in the Executive Branch that serves as the guardian of Federal merit systems.

The Board's mission is to ensure that Federal employees are protected against abuses by agency management, that Executive Branch agencies make employment decisions in accordance with the merit system principles, and that Federal merit systems are kept free of prohibited personnel practices. The Board accomplishes its mission by:

- Hearing and deciding employee appeals from agency personnel actions and other matters under the Board's appellate jurisdiction;
- Hearing and deciding cases brought by the Special Counsel involving alleged abuses of the merit systems, and other cases arising under the Board's original jurisdiction;
- Conducting studies of the civil service and other merit systems in the Executive Branch to determine whether they are free of prohibited personnel practices; and
- Providing oversight of the significant actions and regulations of the Office of Personnel Management (OPM) to determine whether they are in accord with the merit system principles and free of prohibited personnel practices.

## JURISDICTION

### *Appellate Jurisdiction*

Agency personnel actions that Federal employees may appeal to the Board include: adverse actions (removals, suspensions of more than 14 days, reductions in grade or pay, and furloughs of 30 days or less), performance-based removals or reductions in grade, denials of within-grade increases, certain reduction-in-force (RIF) actions, denials of restoration to duty or reemployment rights, and removals from the Senior Executive Service (SES) for failure to be recertified. Determinations by OPM in employment suitability and retirement matters are also appealable to the Board.

When an issue of discrimination prohibited by the Civil Rights Act of 1964 and other anti-discrimination laws is raised in connection with an appealable personnel action, the Board has jurisdiction over both the appealable action and the discrimination issue. Such appeals are termed "mixed cases." In these cases, an appellant may ask the Equal Employment Opportunity Commission (EEOC) to review the final decision of the Board. If the EEOC disagrees with the Board's decision on the discrimination issue, the case is returned to the Board. The Board may concur with EEOC, affirm its previous decision, or affirm its previous decision with modifications. If the Board does not concur in the EEOC decision, the case is referred to a Special Panel for a final decision. (A Special Panel is convened when needed and is composed of a Chairman appointed by the President, one member of the Board, and one EEOC commissioner.)

Under the Whistleblower Protection Act of 1989 (WPA), personnel actions--including

appointments, promotions, details, transfers, reassignments, and decisions concerning pay, benefits, awards, education, or training--that are not normally appealable to the Board may be appealed to the Board under certain circumstances. Such actions may be appealed to the Board *only* if the appellant alleges that the action was taken because of whistleblowing, *and* if the appellant first filed a complaint with the Special Counsel and the Special Counsel did not seek corrective action from the Board.

In recent years, the Board's jurisdiction has been extended. Under the 1994 Uniformed Services Employment and Reemployment Rights Act (USERRA), the Board has jurisdiction over complaints alleging a violation of Chapter 43 of Title 38, relating to the employment and reemployment rights of persons who have served in the uniformed services. The 1996 Presidential and Executive Office Accountability Act authorizes appeals to MSPB by employees in the Executive Office of the President based on violations of a number of workplace laws, including the Family and Medical Leave Act, Fair Labor Standards Act, Employee Polygraph Protection Act, and Worker Adjustment and Retraining Notification Act, as well as USERRA. With the enactment of the Veterans Employment Opportunities Act of 1998, a preference eligible employee may file an appeal with MSPB based on a violation of any law or regulation relating to veterans' preference, after first filing a complaint with the Department of Labor (DOL) and allowing DOL 60 days to try to resolve the matter. In addition, a violation of veterans' preference is now a prohibited personnel practice, allowing the Special Counsel to petition the Board to order disciplinary action against an employee who commits such a violation.

For the Board to have jurisdiction over an appeal, it must possess jurisdiction over both the action and the individual filing the appeal. The employees and others (e.g., applicants for employment, annuitants in retirement cases) who may appeal specific actions vary in accordance with the law and regulations governing the specific action. For some actions, classes of employees, such as political appointees, and employees of specific agencies are excluded.

With respect to adverse actions, which account for almost half of all appeals to the Board, the following categories of employees have appeal rights: (1) employees in the competitive service and preference eligible employees in the excepted service who have completed their probationary period; (2) non-preference eligible employees in the excepted service (excluding those in the Postal Service and certain other agencies) who have completed two years current continuous service in an Executive agency; and (3) non-preference eligible supervisors and managers in the Postal Service.

### *Original Jurisdiction*

Cases that arise under the Board's original jurisdiction include:

- Corrective and disciplinary actions brought by the Special Counsel against agencies or Federal employees who are alleged to have committed prohibited personnel practices, or to have violated certain civil service laws, rules or regulations;
- Requests for stays of personnel actions alleged by the Special Counsel to result from prohibited personnel practices;
- Disciplinary actions brought by the Special Counsel alleging violation of the Hatch Act;
- Certain proposed actions brought by agencies against administrative law judges;
- Requests for review of an OPM regulation or of an agency's implementation of an OPM regulation; and
- Informal hearings in cases involving proposed performance-based removals from the Senior Executive Service.

### *Judicial Review*

With two exceptions, judicial review of final Board decisions in both appellate and original jurisdiction cases lies in the U.S. Court of Appeals for the Federal Circuit. The exceptions are:

- Board decisions in mixed cases may be appealed to an appropriate U.S. district

court. (A Special Panel decision also may be appealed to an appropriate U.S. district court.) If review of all issues *except* the discrimination issue is requested, however, a mixed case appellant may elect review by the Federal Circuit.

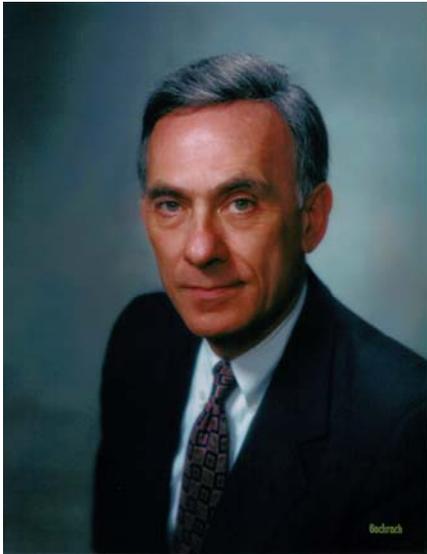
- In Hatch Act cases involving State or local Government employees, judicial review lies

first in the U.S. district courts and then in the regional courts of appeals.

The Director of OPM may petition the Board for reconsideration of a final decision. The Director also may seek judicial review in the Federal Circuit of Board decisions that have a substantial impact on a civil service law, rule, regulation, or policy.

## BOARD MEMBERS

The bipartisan Board consists of a Chairman, a Vice Chairman, and a Member, with no more than two of its three members from the same political party. Board members are appointed by the President, confirmed by the Senate, and serve overlapping, non-renewable 7-year terms.



**BEN L. ERDREICH** became Board Chairman on July 2, 1993, following his nomination by President Clinton and confirmation by the Senate. His term appointment expires March 1, 2000. Previously, he served for 10 years in the U.S. Congress as the representative of the 6th District of Alabama. He was a member of the Committee on Banking, Finance and Urban Affairs and chaired its Subcommittee on Policy Research and Insurance. Mr. Erdreich was a Member of the Jefferson County (Alabama) Commission from 1974 to 1982. Prior to that, he was a partner in the firm of Cooper, Mitch & Crawford, Attorneys, in Birmingham, Alabama. He served in the Alabama House of Representatives from 1970 to 1974. He is a graduate of Yale University and received his J.D. degree from the University of Alabama School of Law. He is admitted to the Alabama and District of Columbia bars and is a member of the Federal Circuit, District of Columbia, Alabama, and Birmingham bar associations.

**CHAIRMAN**

## VICE CHAIRMAN

**BETH S. SLAVET** took the oath of office as Vice Chairman and member of the U.S. Merit Systems Protection Board on August 15, 1995, following her nomination by President Clinton and confirmation by the Senate. Her term appointment expires March 1, 2002. Ms. Slavet served as Labor Counsel to the Committee on Labor and Human Resources of the U.S. Senate from March 1993 until January 1995. Previously, she was Legislative Counsel and Staff Director for U.S. Representative Chester Atkins (D-MA). From 1984 to 1992, Ms. Slavet was an attorney in private practice in Washington, DC, representing public and private sector unions and employees. Prior to that, she served as the staff attorney to the American Federation of Government Employees Local 1812 in Washington, DC. She is a graduate of Brandeis University and received her J.D. degree from the Washington University School of Law. She is admitted to the District of Columbia Bar and is a member of the Federal Circuit and District of Columbia bar associations.



## MEMBER

**SUSANNE T. MARSHALL** was sworn in as Member of the Board on November 17, 1997, following her nomination by President Clinton and confirmation by the Senate. Her term appointment expires March 1, 2004. She served on the staff of the Committee on Governmental Affairs of the United States Senate, with jurisdiction over all Federal employee personnel issues, from December 1985 until her appointment. During that time, she served three distinguished members of the Senate--Chairman/Ranking Republican William V. Roth, Jr., of Delaware (1985-1995), Chairman Ted Stevens of Alaska (1995-1996), and Chairman Fred Thompson of Tennessee (1997). Before that, she held positions in the House of Representatives as Republican Staff Assistant to the Committee on Government Operations (1983-1985) and as Legislative Assistant on the staff of a Member from Georgia (1981-1982). She has also worked in the private sector while living in Georgia (1976-1981) and for a trade association in Washington, DC (1972-1976). She attended the University of Maryland in Munich, Germany, and the American University.



## BOARD ORGANIZATION

The **Chairman, Vice Chairman, and Member** adjudicate the cases brought to the Board. Each has his/her individual office. The **Chairman**, by statute, is the chief executive and administrative officer of the Board. Office heads report to the Chairman through the Chief of Staff.

The **Office of Regional Operations** provides leadership to the MSPB regional offices in carrying out their adjudicatory and administrative functions. The five regional offices (including five field offices) receive and process initial appeals and related cases filed with MSPB. Administrative judges in the regional and field offices may also adjudicate corrective actions brought by the Special Counsel when such cases are reassigned from headquarters. The judges are responsible for adjudicating assigned cases and for issuing fair and well-reasoned initial decisions.

The **Office of the Administrative Law Judge** adjudicates and issues initial decisions in Hatch Act cases, corrective and disciplinary action complaints brought by the Special Counsel, and proposed agency actions against administrative law judges. The Administrative Law Judge is authorized to decide initial Special Counsel stay requests under authority delegated by individual Board members and to hold informal hearings in performance-based removals from the SES. The Administrative Law Judge also adjudicates and issues initial decisions in MSPB employee appeals, appeals involving classified information affecting national security, and other cases assigned by the Board.

The **Office of Appeals Counsel** prepares proposed decisions that recommend appropriate action in cases where a party petitions for review of a judge's initial decision and in all other cases decided by the 3-member Board, except for those cases assigned to the

Office of the General Counsel. The office conducts legal research and submits proposed opinions to the Board for final adjudication. It also conducts the Board's petition for review settlement program, processes interlocutory appeals of rulings made by judges, makes recommendations on reopening cases on the Board's own motion, and provides research and policy memoranda to the Board on legal issues.

The **Office of the Clerk of the Board** receives and processes cases filed at Board headquarters, rules on certain procedural matters, and issues the Board's Opinions and Orders. The office serves as the Board's public information center, including providing information on the status of cases, distributing copies of Board decisions and publications, and operating the Board's Library and on-line information services. The office answers requests under the Freedom of Information and Privacy Acts at the Board's headquarters and responds to all other information requests except those for which the Office of the General Counsel or the Office of Policy and Evaluation is responsible. The office also certifies official records to the courts and Federal administrative agencies, and manages the Board's records and directives system, legal research programs, and the Government in the Sunshine Act program.

The **Office of the General Counsel**, as legal counsel to the Board, provides advice to the Board and its organizational components on matters of law arising in day-to-day operations. Pursuant to the Board's statutory authority under 5 U.S.C. § 1204(i), the office represents the Board in litigation. It also prepares proposed decisions for the Board on assigned cases, including requests to review OPM regulations and cases involving enforcement of Board orders. The office coordinates the Board's legislative policy and congressional relations functions; responds to requests for non-case related information from the White House,

U.S. MERIT SYSTEMS PROTECTION BOARD

Congress, and the media; and produces public information publications and the agency's annual report to the President and the Congress. The office also conducts the Board's ethics program and plans and directs audits and investigations.

The **Office of Policy and Evaluation** carries out the Board's statutory responsibility to conduct special studies of the civil service and other merit systems, including annual oversight reviews of the Office of Personnel Management. Reports of these studies are directed to the President and the Congress and are distributed to a national audience. The office disseminates information about the Board's studies through outreach appearances, articles, and electronic media. The office also responds to requests from Federal agencies for information, advice, and assistance on issues that have been the subject of Board studies.

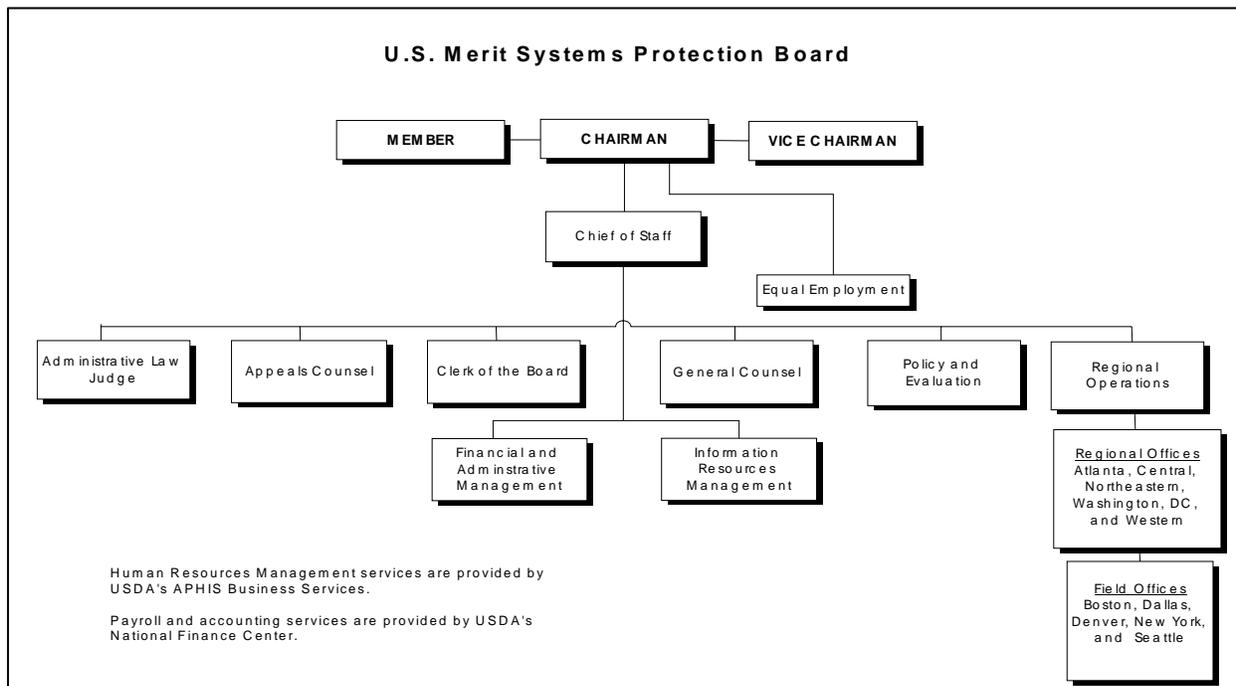
The **Office of Equal Employment Opportunity** plans, implements, and evaluates the Board's equal employment opportunity (EEO) programs. It processes complaints of alleged discrimination and furnishes advice and

assistance on affirmative action initiatives to the Board's managers and supervisors.

The following administrative divisions operate under the supervision of the Chief of Staff:

The **Financial and Administrative Management Division** administers the budget, procurement, property management, physical security, and general services functions of the Board. It develops and coordinates internal management programs and projects, including review of internal controls agencywide. It also administers the agency's cross-servicing arrangements with the U.S. Department of Agriculture's National Finance Center (NFC) for accounting and payroll services and with ABS (APHIS Business Services) for human resources management services.

The **Information Resources Management Division** develops, implements, and maintains the Board's automated information systems in order to help the Board manage its caseload efficiently and carry out its administrative and research responsibilities.



## REGIONAL AND FIELD OFFICE JURISDICTIONS

### Atlanta Regional Office

Alabama, Florida, Georgia, Mississippi, South Carolina, and Tennessee

### Central Regional Office

Illinois; Indiana; Iowa; Kansas City, Kansas; Kentucky; Michigan; Minnesota; Missouri; Ohio; and Wisconsin

### Dallas Field Office

Arkansas, Louisiana, Oklahoma, and Tennessee

### Northeastern Regional Office

Delaware, Maryland (except the counties of Montgomery and Prince George's), New Jersey (except the counties of Bergen, Essex, Hudson, and Union), Pennsylvania, and West Virginia

### Boston Field Office

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont

### New York Field Office

New Jersey (counties of Bergen, Essex, Hudson, and Union), New York, Puerto Rico, and Virgin Islands

### Washington Regional Office

Washington, D.C.; Maryland (counties of Montgomery and Prince George's); North Carolina; Virginia; and all overseas areas not otherwise covered

### Western Regional Office

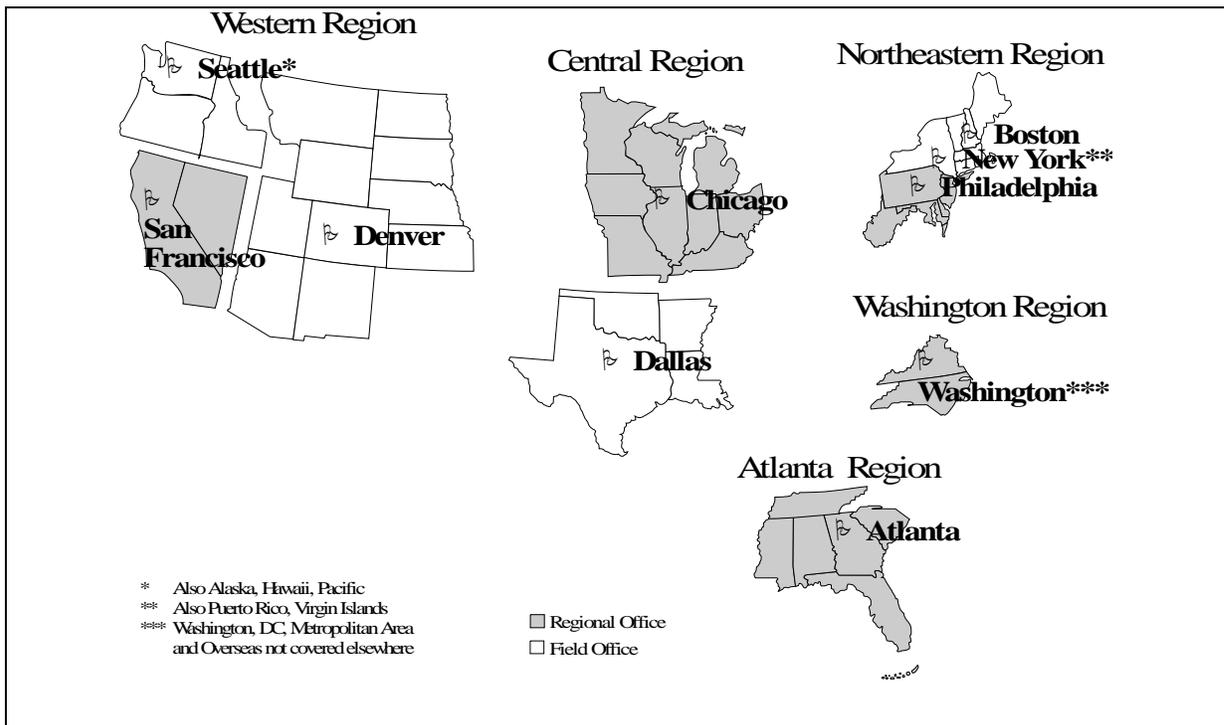
California and Nevada

### Denver Field Office

Arizona, Colorado, Kansas (except Kansas City), Montana, Nebraska, New Mexico, North Dakota, South Dakota, Utah, and Wyoming

### Seattle Field Office

Alaska, Hawaii, Idaho, Oregon, Washington, and Pacific overseas areas



**FISCAL YEAR 1998 CASE PROCESSING -  
STATISTICAL HIGHLIGHTS**

**CASES DECIDED BY MSPB IN FY 1998**

<b>RO/FO Decisions:</b>	
Appeals	7,376
Addendum Cases <sup>1</sup>	945
Stay Requests <sup>2</sup>	121
<b>TOTAL RO/FO Decisions</b>	<b>8,442</b>
<b>ALJ Decisions - Original Jurisdiction Cases <sup>3</sup></b>	<b>15</b>
<b>Board Decisions:</b>	
Appellate Jurisdiction:	
PFRs - Appeals	1,611
PFRs - Addendum Cases <sup>1</sup>	178
Reviews of Stay Request Rulings	0
Requests for Stay of Board Order	1
Reopenings <sup>4</sup>	12
Court Remands	16
Compliance Referrals	64
EEOC Non-concurrence Cases	0
Arbitration Cases	5
Subtotal	1,887
Original Jurisdiction <sup>5</sup>	32
<b>TOTAL Board Decisions</b>	<b>1,919</b>
<b>TOTAL Decisions (Board, ALJ, RO/FOs)</b>	<b>10,376</b>

<sup>1</sup> Includes requests for attorney fees, requests for compensatory damages (discrimination cases only), requests for consequential damages (whistleblower cases only), petitions for enforcement, Board remand cases, and court remand cases.

<sup>2</sup> Includes 76 stay requests in whistleblower cases and 45 in non-whistleblower cases.

<sup>3</sup> Initial decisions issued by ALJ. Case type breakdown: 6 OSC corrective actions (including 1 compliance case), 7 OSC disciplinary actions (including 2 Hatch Act cases), and 2 actions against ALJs.

<sup>4</sup> Includes 10 cases reopened by the Board on its own motion and 2 cases where OPM requested reconsideration.

<sup>5</sup> Final Board decisions. Case type breakdown: 15 OSC stays; 2 OSC corrective actions, 9 OSC disciplinary actions, (including 7 Hatch Act cases), 3 actions against ALJs, and 3 regulation review requests.

## **KINDS OF APPELLATE JURISDICTION CASES**

The kinds of appellate jurisdiction cases in which the Board's administrative judges issue initial decisions or orders are:

- *Appeal (or Initial Appeal)* - A request by an appellant that the Board review an agency action.
- *Stay Request* - A request that the Board order a stay of an agency action (authorized only where the appellant alleges that the action was or is to be taken because of whistleblowing).
- *Motion for Attorney Fees* - A request by an appellant who prevails in an appeal that the Board order the agency to pay the appellant's attorney fees.
- *Request for Compensatory Damages* - A request by an appellant who prevails in a mixed case appeal on the basis of discrimination for payment of compensatory damages under the Civil Rights Act of 1991.
- *Request for Consequential Damages* - A request by an appellant who prevails in a whistleblower appeal for payment of consequential damages, as authorized by 5 U.S.C. § 1221.
- *Petition for Enforcement* - A request by a party to an appeal that the Board enforce a final decision or order.
- *Remand* - A case returned to an administrative judge by the Board or court, after an initial decision has been issued, for additional processing and issuance of a new initial decision.

Attorney fee cases, petitions for enforcement, requests for damages, and remands, as a group, are termed "addendum cases" by the Board.

Just over 20 percent of initial appeals decided result in the filing of a petition for review at Board headquarters. Initial decisions in addendum cases and orders issued on stay

requests are also subject to review by the Board. In addition, the Board has authority to review an arbitrator's award when the subject of the grievance is an action appealable to the Board and the grievant raises a discrimination issue in connection with the action. The kinds of appellate jurisdiction cases in which the Board issues final decisions or orders are:

- *Petition for Review* - A request by a party that the Board review an initial decision of an administrative judge. A petition for review may be filed with respect to an initial decision on an appeal or in an addendum case.
- *Request to Review Stay Ruling* - A request by a party that the Board review an administrative judge's order ruling on a stay request.
- *Petition to Review Arbitrator's Award* - A request that the Board review an arbitrator's award where the employee has grieved an action appealable to the Board and the employee raises an issue of prohibited discrimination.
- *Reopening on the Board's Own Motion* - A case that the Board reopens on its own motion, to reconsider either an initial decision of an administrative judge or a final Board decision.
- *OPM Request for Reconsideration* - A request by the Director of OPM that the Board reconsider a final decision.
- *Court Remand* - A case returned to the Board by a court, after an appellant or the Director of OPM has sought judicial review of a final Board decision, for issuance of a new decision. Also, a case returned by a court where the Board has requested remand.
- *EEOC Non-concurrence* - A mixed case returned to the Board by the EEOC, after an appellant has sought EEOC review of a Board decision, in which the EEOC does not concur with the Board decision on the discrimination issue.

- *Compliance Referral* - A case referred to the Board by an administrative judge for enforcement of a final Board decision or order, upon the administrative judge's finding that a party is not in compliance.
- *Request for Stay of Board Order* - A request by a party that a final order of the Board be stayed pending judicial review or a request for reconsideration by the Director of OPM.

**APPELLATE CASE PROCESSING IN FISCAL YEAR 1998**

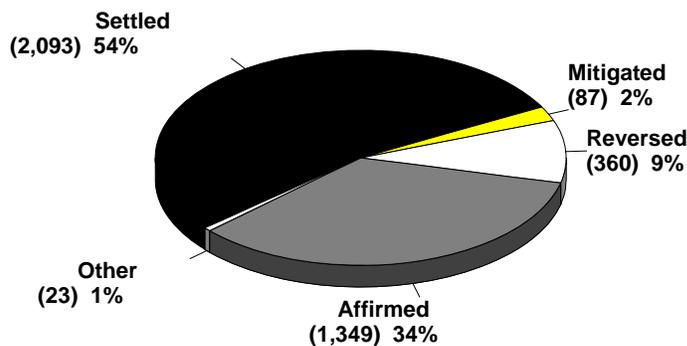
*Regional and Field Offices*

- *Case Receipts* - The regional and field offices received 7,752 new cases (initial appeals, addendum cases, and stay requests) in FY 1998--down about 11 percent from the number received in FY 1997. At the end of the fiscal year, there

were 2,006 cases pending in the regional and field offices.

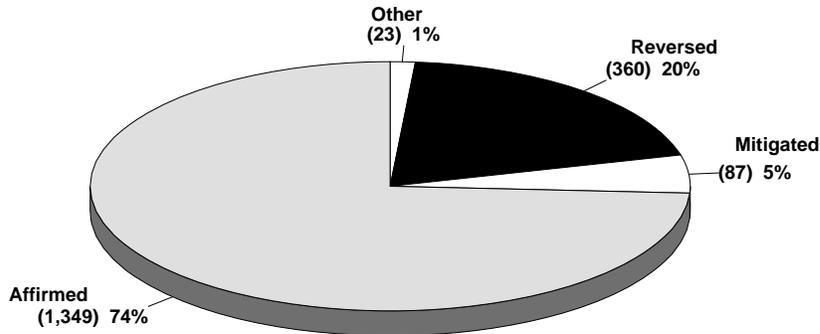
- *Cases Decided* - The administrative judges decided 8,442 cases in FY 1998. This number includes 7,376 initial appeals and 945 addendum cases. There were 121 orders ruling on stay requests--76 in whistleblower cases and 45 in non-whistleblower cases.
- *Disposition* - Of the 7,376 initial appeals decided, 3,464 (47 percent) were dismissed. Of the dismissals, 70 percent were for lack of jurisdiction, agency cancellation of the action, or appellant withdrawal of the appeal; 7 percent were dismissed as untimely; and 23 percent were dismissed without prejudice to later refile. The accompanying charts show the outcomes of appeals that were not dismissed and the disposition of appeals adjudicated on the merits.

**OUTCOMES OF FY 1998 APPEALS NOT DISMISSED**



**Based on 3,912 initial appeals not dismissed.**

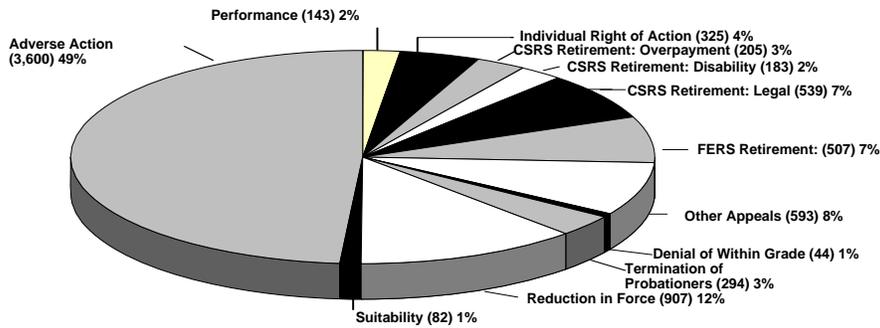
DISPOSITION OF INITIAL APPEALS  
ADJUDICATED ON THE MERITS IN FY 1998



Based on 1,819 adjudicated initial appeals.

- Settlement Rate* - Of the 3,912 appeals that were not dismissed, 2,093 were settled, for an overall settlement rate of 53.5 percent--an increase over the settlement rate of about 50 percent that has prevailed for the last decade. The settlement rate for performance cases was 71 percent; for adverse action cases, 68 percent; and for denials of within-grade increases, 53 percent.
- Relief for Appellants* - Considering the number of appeals settled (2,093) and those in which the agency action was reversed or mitigated (447), appellants received relief in 65 percent of the appeals that were not dismissed. Of the 1,819 appeals that were not dismissed or settled, 25 percent resulted in reversal or mitigation of the agency action.
- Processing Time* - The average processing time for initial appeals and addendum cases was 108 days. Of the initial appeals decided, 77 percent were decided within 120 days.
- Types of Actions Appealed* - Of the initial appeals decided, 49 percent were appeals of agency adverse actions, 12 percent were RIF appeals, 3 percent involved termination of probationers, and 2 percent were appeals of performance-based actions. Retirement cases (both CSRS and FERS) accounted for 19 percent of total appeals decided, and the remainder involved other types of agency actions.
- Whistleblower Appeals* - There were 673 whistleblower appeals and stay requests decided. Of this number, 325 were individual right of action (IRA) appeals in which the appellant was required to exhaust the procedures of the Office of Special Counsel, 272 were direct appeals to the Board that included an allegation of reprisal for whistleblowing, and 76 were requests to stay an action allegedly based on whistleblowing.

TYPES OF INITIAL APPEALS DECIDED IN FY 1998



Total Number of Initial Appeals: 7,376

- *Relief for Appellants in Whistleblower Appeals* - Of the 597 whistleblower appeals decided (325 IRA appeals and 272 appeals of otherwise appealable actions), 350 (59 percent) were dismissed. In the other 247 whistleblower appeals, appellants received relief--through settlement, reversal, or mitigation--in 141 (57 percent).
- *Mixed Cases* - Allegations of discrimination were raised in 1,794 of the initial appeals decided; however, in 1,440 of those appeals, the discrimination issue was not decided because the case was dismissed (876) or settled (550) or the allegation was withdrawn (14). The remaining 354 mixed case appeals resulted in a finding of no discrimination in 345 (97 percent) and a finding of discrimination in 9 (3 percent).

*Board Headquarters*

*Case Receipts* - At headquarters, the Board received 2,147 new petitions for review and other cases (both appellate and original jurisdiction) in FY 1998--up almost 18

percent from FY 1997. At the end of the fiscal year, there were 1,136 cases pending.

- *Cases Decided* - The 3-member Board decided 1,919 cases in FY 1998. Of these, 1,611 were petitions for review of initial decisions on appeals, 178 were petitions for review of initial decisions in addendum cases, 98 were other appellate jurisdiction cases, and 32 were original jurisdiction cases. In addition, the Administrative Law Judge issued initial decisions in 15 original jurisdiction cases.
- *Disposition of PFRs* - Of the 1,611 petitions for review of initial decisions on appeals, 5 percent were dismissed, 2 percent were settled, and 64 percent were denied for failure to meet the criteria for review. The remaining 29 percent consisted of 23 percent granted and 6 percent denied but simultaneously reopened by the Board.
- *Outcome of PFRs Reviewed* - Of the decisions in the 462 PFRs that were granted or denied but simultaneously

reopened, 13 percent affirmed the initial decision, 56 percent reversed it, 20 percent remanded the case to the administrative judge, and 1 percent mitigated the agency action. In the remaining 10 percent, the initial decision was vacated or the case was forwarded to a regional/field office for processing.

- *Processing Time* - The average processing time for all petitions for review (on both initial appeals and addendum cases) was 205 days. The Board processed 10 percent of the PFRs on initial appeals in 110 days or less, averaging 85 days.

The Board headquarters case processing statistics for FY 1998 were affected significantly by a consolidation of 236 PFRs involving an issue of law enforcement officer (LEO) credit for retirement purposes. This large consolidated case took almost seven months to process and ultimately resulted in the Board reversing the two initial decisions. (The cases were consolidated in two groups at the field office level, one for the 81 CSRS appellants and one for the 155 FERS appellants.)

Additional fiscal year 1998 case processing statistics, including a breakdown of appeals by agency, are contained in the Board publication, *Cases Decided by the U.S. Merit Systems Protection Board, FY 1998*.

## ADJUDICATION

The Board continued to issue significant precedential decisions during fiscal year 1998, including decisions applying relatively new laws such as USERRA and the Family and Medical Leave Act, and earlier laws such as the Whistleblower Protection Act (WPA). The Board also issued several important decisions interpreting its jurisdiction over various matters, its procedures, and the remedies it can order.

### **UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)**

*Milner v. Department of Justice*, 77 M.S.P.R. 37 (1997)

Under USERRA, a person has been denied a “benefit of employment” based on the performance of military service if his service was a motivating factor in the employer’s action, unless the employer can prove that the action would have been taken even absent that service. The decision sets out the USERRA exhaustion of remedy requirements where an appellant has filed a complaint with the Department of Labor.

*Roberson v. U.S. Postal Service*, 77 M.S.P.R. 569 (1998)

Under USERRA, the Board has appellate jurisdiction over appeals of “any persons,” as defined in Subchapter II, 38 U.S.C. § 4311, alleging discrimination in Federal employment on account of prior military service, including individuals who have not completed one year of current continuous service in the same or similar positions. The law sets no time limit for filing with the Board, and the Board therefore will not apply the time limit under its interim regulations to an appeal which arose

prior to the regulations’ effective date. If an appellant supports his claim through the use of direct evidence of discriminatory intent, the administrative judge should analyze the claim in accordance with the USERRA standard of review. If an appellant supports his claim by circumstantial evidence, the administrative judge should apply the analogous burdens of proof and production under Title VII of the Civil Rights Act of 1964 for analyzing discrimination claims based on circumstantial evidence.

*McBride v. U.S. Postal Service*, 78 M.S.P.R. 411 (1998)

Under USERRA, agencies are prohibited from denying employment because of a person’s “performance of [military] duty,” not because of any disability arising out of such duty.

### **WHISTLEBLOWER PROTECTION ACT**

*Thomas v. Department of the Treasury*, 77 M.S.P.R. 224 (1998)

The Board held that a disclosure that alleges only that an agency’s selection process was unfair because it considered nonmerit factors is not the kind of waste, fraud, or abuse the WPA was intended to reach. The Board also held that if an appellant claims in a complaint to the Office of Special Counsel that a disclosure was protected whistleblowing under a specific statutory category, he will be considered to have exhausted his OSC remedy even if he claims in his subsequent IRA appeal that the disclosure was protected but that it fell under a different statutory category. OSC can be expected to know what statutory categories might be implicated by any particular factual allegations,

and the law does not impose a “correct labeling” requirement on an individual who seeks corrective action before OSC for alleged whistleblower retaliation.

*Walton v. U.S. Department of Agriculture*, 78 M.S.P.R. 401 (1998)

The reasoning of *Currier v. U.S. Postal Service*, 72 M.S.P.R. 191, that an appeal is not moot where the agency has completely rescinded the action if the appellant has outstanding, viable claims for compensatory damages before the Board also applies to outstanding claims for consequential damages and corrective action in an IRA appeal.

### **FAMILY AND MEDICAL LEAVE ACT (FMLA)**

*Gross v. Department of Justice*, 77 M.S.P.R. 83 (1997)

The Board restated requirements for entitlement to leave under the Family and Medical Leave Act of 1993. An agency may not deny leave under the FMLA where advance notice cannot be given; an agency may not apply a more restrictive leave policy than that provided under the law; and it may not deny leave under the FMLA for failure to follow its own procedures. Further, an employee is not required to invoke the FMLA explicitly in requesting covered leave, and the denial of leave to which he is entitled under FMLA is a violation of law.

*Young v. U.S. Postal Service*, 79 M.S.P.R. 25 (1998)

The Board addressed the obligations of the parties under the FMLA, defined a “serious health condition” under the law, and outlined conditions under which an employee may use FMLA leave to care for a sick family member. In setting forth FMLA notice requirements, the Board held that an employee who informs the agency that she will be absent and states a reason that might justify granting leave need not actually verbalize that she is requesting FMLA

leave. The death of a family member is not a reason for invoking the FMLA, and, while the Federal Employees Family Friendly Leave Act of 1994 provides for leave for that purpose, it provides no aid to this appellant because USPS employees are not subject to that law. More generally, the Board also found that an appellant need not prove that she was incapable of functioning in any aspect of her life in order to prove that she could not work, and that activities such as keeping doctors’ appointments and filing an OWCP claim may be consistent with medical incapacity.

### **BOARD JURISDICTION**

*Park v. Department of Health and Human Services*, 78 M.S.P.R. 527 (1998)

The Board reconsidered its earlier ruling in this appeal. If an appellant is appointed by transfer, he retains the career-conditional status he had prior to the transfer, and the corresponding right to appeal an adverse action. In determining whether an employee is required to serve a new probationary period, the manner in which he was selected for an appointment is not dispositive of his tenure, but how he was appointed (transfer or new appointment) is dispositive. The Board distinguished cases in which it held that the agency’s obligation to notify an appellant of a change in his tenure upon acceptance of another appointment in the same agency does not apply where the appellant’s later appointment is in a different agency.

*Morales v. Department of Justice*, 77 M.S.P.R. 482 (1998)

Because discrimination based on sexual preference or orientation is not prohibited sex discrimination under 5 U.S.C. § 2302(b)(1), the Board lacks jurisdiction under 5 U.S.C. § 7121 to review an arbitration decision where the only discrimination claim is based on such orientation.

*Nordhoff v. Department of the Navy*, 78 M.S.P.R. 88 (1998)

Although a retirement is presumed to be voluntary, and as such, unappealable, an individual who retired on disability may establish that he was constructively removed by showing that there was an accommodation available on the effective date of his separation that would have allowed him to continue his employment and that his employing agency did not provide him such accommodation. In this case, the appellant failed to show that there was an accommodation available on the effective date of his separation that would have allowed him to continue his employment.

*Lomax v. Department of Defense*, 78 M.S.P.R. 553 (1998)

This case clarifies and sets the burden of proof in reduction in pay cases. The general rule is that such a reduction is appealable, but that there is an exception set out at 5 C.F.R. § 752.401(b)(15) for actions reducing an employee's basic pay "from a rate that is contrary to law or regulation." The decision holds that the appellant has the burden of establishing that the appeal is within the Board's jurisdiction, that he or she makes a *prima facie* showing by establishing that his or her rate of basic pay was reduced, and that, if the agency has relied on the exception to the general rule, it bears the burden of proving that it had originally set the pay rate contrary to law or regulation.

## TIMELINESS

*Lacy v. Department of the Navy*, 78 M.S.P.R. 434 (1998)

The Board held that an appellant must receive explicit information regarding the legal standard for establishing good cause for an untimely filing on the basis of physical or mental illness. Under the restated test, a party must: (1) identify the time period during which he suffered from the illness; (2) submit medical evidence showing that he suffered from the alleged illness during that time period; and (3) explain how the illness prevented him from timely filing his appeal or a request for an

extension of time. Neither medical evidence nor proof of incapacity is a requirement, and cases holding to the contrary were overruled. This decision specifies that the rules of fairness--that appellants be fully informed of the requirements for establishing jurisdiction and the date on which their appeal period began to run--apply to all timeliness issues.

*Greek v. U.S. Postal Service*, 78 M.S.P.R. 470 (1998)

In addition to restating the rule that a judge may not dismiss an appeal on the basis of untimeliness where the resolution of the timeliness issue depends on whether the appellant was subjected to an appealable action, the Board specifically addressed the question of timeliness as to alleged constructive suspension appeals. It held that, in such cases, where the agency has made no express decision that an appellant is to remain absent for more than 14 days, the appeal period does not begin to run until 15 days later, that is, only once an appeal could have been filed because the "more than 14 day" jurisdictional limitation has been met.

## MITIGATION

*Stabile v. Defense Commissary Agency*, 76 M.S.P.R. 658 (1997)

The Board set forth an agency's obligations in proving compliance with a final order that mitigates an appellant's removal to a demotion to the next highest grade position. The Board overruled *Davis v. U.S. Postal Service*, 67 M.S.P.R. 417, and *Lucas v. U.S. Postal Service*, 64 M.S.P.R. 172, to the extent that they are inconsistent in suggesting an entitlement to vacancies after the period between the date of the initial decision and the date of the reinstatement. There is no indefinite entitlement to reassignment until an appellant is placed in the position with the least reduction in pay under the Board's final decision, but the agency does have an obligation to provide notice to him of vacant higher graded positions for which he qualifies and which the agency elects to fill, in those cases where the grade to which he is

reinstated is less than the highest grade to which he would be entitled under the final order. The agency must give the appellant priority consideration for such positions; the period of consideration for placement differs from that for back pay purposes. Reassignment outside the facility at which an appellant formerly worked is permissible only if the agency shows overriding circumstances precluding his return to a position at his former facility.

## REMEDIES

*Markiewicz-Sloan v. U.S. Postal Service*, 77 M.S.P.R. 58 (1997)

This is the Board's lead decision on the subject of compensatory damages under the Civil Rights Act of 1991. The entire pattern of discrimination predating the appealable actions is to be considered in awarding compensatory damages; an award of compensatory damages is not intended to provide double recovery for an EEO complainant; and an appellant who received an OWCP award for pecuniary losses caused by discrimination can also claim compensatory damages for the non-pecuniary losses caused by it, even though both may be connected to the same injury. In addition, the Board deferred to and adopted EEOC's criteria for proving entitlement to and the amount of a compensatory damages award. The decision sets out what is encompassed in "non-pecuniary losses" and notes that with two exceptions, an agency is fully liable for the damage resulting from the prohibited discrimination even though the appellant had a pre-existing condition that made the consequences of the wrongful act more severe than they would have been absent the pre-existing condition. However, if events other than the discriminatory conduct have affected the appellant's condition, the agency would not be liable for those damages. It is material to the issue of the nature and severity of an appellant's emotional distress that she sought expert medical help for her condition. With respect to the amount of the award itself, the Board concluded that there is no legal yardstick by which to measure accurately what is reasonable compensation for injuries such as emotional

distress, but, under precedent, this appellant was entitled to \$35,000.00 for her non-pecuniary damages.

*Special Counsel v. DeMeo*, 77 M.S.P.R. 158 (1998)

The Board concluded that it is not authorized to impose a debarment from Federal employment for violations of the Hatch Act, based in part on the absence of legislative history that debarment was intended. A statute that imposes penalties must do so in clear terms to avoid unfairness and arbitrary enforcement, and penal statutes should be strictly construed against the Government or parties seeking to enforce statutory penalties and in favor of the persons against whom the penalties are sought.

*Martin v. Department of the Air Force & OPM*, 79 M.S.P.R. 380 (1998)

Reversing its earlier decision in this appeal, the Board here rejected the National Labor Relations Board rule that allows back pay recovery where a disability that makes an appellant not ready, willing, and able to work is closely related to the interim employment or arises from the unlawful discharge, and is not a usual incident of the hazards of living generally. Here, the appellant had been injured in the course of the employment he took during the period the unwarranted personnel action was in effect. This final decision concluded that an award of back pay was not allowed under 5 C.F.R. § 550.804(c) because the appellant was not ready, willing, and able to work during the back pay period, regardless of any causal connection between his inability to work and the unwarranted personnel action.

*Timberlake v. U.S. Postal Service*, 79 M.S.P.R. 520 (1998)

A Postal Service preference eligible employee's back pay entitlement is determined by the Back Pay Act and its implementing regulations, not the USPS's Employee and Labor Relations Manual. Thus, the agency may require information from the appellant that will allow it to compute a back-pay award under the

Act but may not require information from him that is outside the scope of the Act. Where, as here, the agency went beyond the requirements of the Act to enforce a provision of the Employee and Labor Relations Manual, it was not in compliance with the Board's back pay order.

*Caronia v. Department of Justice*, 78 M.S.P.R. 201 (1998)

The Board may not order damages, reinstatement, and back pay when it finds that although an agency action was taken because of both a permissible reason, such as the appellant's serious misconduct, and an impermissible one, such as disability discrimination, if it finds that the agency would have taken the same action based only on the proper reason. If it finds that the agency did not prove that it would have done so, those remedies may be awarded only if all of the circumstances of the case make them appropriate.

## **DISCRIMINATION**

*Jackson v. U.S. Postal Service*, 79 M.S.P.R. 144 (1998)

The Board reconsidered its decision which found that the appellant had been the victim of disability discrimination when the agency failed to accommodate her by reassigning her from her PS-3 level position. It held that it erred in basing its finding on the appellant's mere articulation of a position to which she could be reassigned and the agency's failure to rebut it. In subsequent compliance proceedings, the agency showed that no positions at her grade level existed. The Board held here that when a case is past that stage of the proceedings where the parties have presented their evidence on a disability discrimination issue, the rebuttable presumption created by the establishment of a *prima facie* case drops from the case and the issue is whether the appellant met her ultimate burden of proving discrimination. This rule is consistent with the Supreme Court's decision in *U.S. Postal Service Board of Governors v. Aikens*, 460 U.S. 711

(1983), a Title VII action in which the Court held that when a case has been fully tried, the factfinder should not analyze portions of the evidence in a burden-shifting approach, but instead should make the ultimate finding of whether discrimination occurred. Thus, an agency must, under 29 C.F.R. § 1614.203(g), identify vacant funded positions in the same commuting area, at or below the employee's current grade or level, to which a disabled employee can be reassigned, but if it fails to meet its reassignment obligation before it removes the employee, that failure does not relieve the appellant of her burden of proving that such positions existed and were available. Absent such proof, there was no discrimination.

*Currier v. U.S. Postal Service*, 79 M.S.P.R. 177 (1998)

The Board overruled *Crawford v. U.S. Postal Service*, 70 M.S.P.R. 416, insofar as it allows a judge, prior to hearing, to strike discrimination claims found to be frivolous. The Board held that where an appeal falls within the scope of 5 U.S.C. § 7701(a)(1), and an appellant alleges discrimination in connection with the appealed action, he has a right to a hearing and to a decision on the merits of his EEO claim. Allowing an administrative judge to strike a discrimination claim without taking evidence is not consistent with EEOC law, nor is it consistent with the longstanding prohibition against summary judgment in Board appeals. The decision also reaffirmed the Board's prior ruling in this case (72 M.S.P.R. 191) that despite the agency's rescission of the underlying action, the appeal is not moot because the appellant may be entitled to compensatory damages if he prevails on his discrimination claim.

## **SETTLEMENT**

*Jordan v. OPM*, 77 M.S.P.R. 610 (1998)

Board procedures empower its judges to facilitate and accept settlement agreements that promote both public and explicit Congressional policy. Where a settlement is entered into the Board's record, it is equivalent to a final Board order in all respects, and OPM, in administering

a retirement matter before it, must effect its terms to the same extent it would a Board order on the merits. Thus, where the settlement of a removal appeal substitutes a new date for the appellant's separation, OPM must give it effect as the date from which the time limit for filing for disability retirement begins to run. The Board also noted that a settlement may not dispose of a third party's claim, or impose duties or obligations on a third party, without that party's agreement.

*Wisdom v. Department of Defense*, 78 M.S.P.R. 652 (1998)

The decision in this appeal clarifies any doubts created by the implication in *Stipp v. Department of the Army*, 64 M.S.P.R. 124, that an appellant's status as a former employee precludes Board authority to enforce against him the terms of a settlement to which he had agreed. It notes that such a conclusion would lead to absurd results and would not effectuate the parties' intent at the time the agreement was signed. Interpretations of settlement agreements that create absurd results are disfavored.

*King-Roberts v. U.S. Postal Service*, 79 M.S.P.R. 464 (1998)

An appellant is entitled to rescission of the settlement agreement and reinstatement of her appeal if the agency has materially breached the agreement, but first she must return all money she received as the result of the agreement. Because the appellant may have been unaware of her repayment obligation when she requested rescission, the Board's remand instructed the judge to provide her an opportunity to choose either to rescind the agreement or to accept its enforcement instead.

## **ATTORNEY'S FEES**

*Swentek v. OPM*, 76 M.S.P.R. 605 (1997)

The Board has the authority to add to the categories deemed to constitute "the interest of justice" for awards of attorney's fees. Here, the Board expanded the "clearly without merit"

category to support an award of fees in those cases "where OPM is aware of some evidence of mental incompetence and ... failed to pursue the matter by undertaking prehearing discovery or otherwise making inquiry and did not actively contest the claim of mental incompetence at the Board hearing." The Board held that in this case an award of fees was warranted under this new category.

*Shimotsukasa v. U.S. Postal Service*, 78 M.S.P.R. 679 (1998)

Where an attorney-client relationship exists, fees charged for a legal investigator may be recovered when the investigator performs tasks that an attorney or a paralegal normally performs and where the investigator's services would normally be separately billed to the client.

## **BOARD PROCEDURES**

*Hasler v. Department of the Air Force*, 79 M.S.P.R. 415 (1998)

This decision overruled *Brumley v. Department of Transportation*, 46 M.S.P.R. 666, and held that the Board's statutory authority permits it to authorize as a method of discovery the use of a physical or mental examination under Rule 35 of the Federal Rules of Civil Procedure. The Board noted that ordering an examination under Rule 35 requires that the mental condition of the party to be examined be "in controversy" and that "good cause" for the examination be shown. Those requirements were explained and, the Board held, were met by the appellant's request for consequential damages that allegedly resulted from the whistleblower reprisal. The Board declined to decide whether less intrusive methods must first be followed.

## **ACCOMPLISHMENTS IN ADJUDICATION**

As a procedural innovation in fiscal year 1998, the Board approved a 1-year pilot project authorizing judges in the regional and field offices to issue bench decisions. Such decisions are oral decisions delivered at the conclusion of

the hearing in a case. A bench decision is then documented in a written decision that is provided to the parties shortly after the hearing. Although the pilot project will not conclude until March 1999, it appears from the 44 bench decisions issued during the fiscal year that the new initiative can serve parties well through faster decisions and by freeing the judges' time normally spent in writing decisions.

At headquarters, the Board had implemented a PFR Form pilot project during the previous fiscal year. The form is designed to help a party provide pertinent information in support of the party's PFR and to assist the Board in adjudicating the PFR. The PFR Form is now used by approximately one-half of the unrepresented appellants who file PFR's. As part of its evaluation of the pilot project during FY 1998, the Board conducted three focus group sessions with agency, employee, and union representatives, including representatives who were not attorneys. Those sessions developed a consensus that the PFR Form was very useful for unrepresented appellants and also produced a number of suggestions for improving the form. The Board is revising the form, consistent with those suggestions.

The Board's PFR Settlement Program, launched in 1993, achieved a 29 percent rate of success in appeals where settlement was attempted at the headquarters level--up from 23 percent during the previous fiscal year. The Board's customers and observers expressed surprise on hearing of this success rate, considering that settlement had been attempted at the regional or field office level in nearly all of these cases, and that an administrative judge had issued an initial decision in favor of one party. Equally important, the settlement efforts furthered the interests of customer service and alternative dispute resolution. *Pro se* appellants and parties continued to express their gratification with the settlement process as a vehicle to promote better understanding of both the adjudicatory process and the law as applied to their cases.

During fiscal year 1998, the Board initiated planning for a formal training program

to help agencies and employees achieve early resolution of potential cases. The program, to be conducted in partnership with the Public Administration Forum and a major university, is intended to develop a cadre of knowledgeable and skilled certified appeals resolution advisors, who will be able to help intercept and resolve cases prior to their being filed with MSPB. The Board expects that successful efforts by these advisors can reduce adjudicatory expenses significantly and resolve the issues within the workplace. This effort, which is expected to get underway late in fiscal year 1999, is consistent with and supportive of the goals and objectives of the Interagency Working Group on Alternative Dispute Resolution established by the President.

Also during FY 1998, the Board finalized three interim regulations that had been published during 1997. (The Board's procedures for both appellate and original jurisdiction cases are set forth in the Code of Federal Regulations at 5 CFR Parts 1201, 1203, and 1209.)

- On June 30, 1998, the Board published a final rule clarifying the authority of MSPB judges to exclude a party or representative from all or any portion of a Board proceeding for contumacious misconduct or conduct that is prejudicial to the administration of justice (63 *Fed. Reg.* 35499).
- On August 3, 1998, the Board published a final rule prescribing procedures for the Board's consideration of requests for attorney fees, consequential damages, and compensatory damages (Subpart H of 5 CFR Part 1201) (63 *Fed. Reg.* 41177).
- On August 11, 1998, the Board published final regulations for the processing of original jurisdiction cases (Subpart D of 5 CFR Part 1201) (63 *Fed. Reg.* 42685). In these regulations, the Board delegated to the Chief Administrative Law Judge the authority to issue initial decisions in most original jurisdiction cases.

**ACCESS TO MSPB ADJUDICATORY PROCEDURES AND DECISIONS**

Additional information on the Board's procedures is available in its publications, *An Introduction to the MSPB*, *Questions & Answers About Appeals*, and *Questions & Answers About Whistleblower Appeals*, which were updated in September 1997.

Final Board decisions are published by commercial publishers, including West Publishing Company (*United States Merit Systems Protection Board Reporter*), Labor Relations Press (*Federal Merit Systems Reporter*), and Information Handling Services (*PERSONNET*). All citations to Board decisions in this report are to the West's publication.

Final Board decisions, weekly summaries of significant decisions, the Board's information publications, and the MSPB Appeal Form are available on the Board's World Wide Web site at [www.mspb.gov](http://www.mspb.gov) and in the MSPB Library of the Government Printing Office's *Federal Bulletin Board*. The bulletin board can be accessed by computer modem at 202-512-1387. Assistance is available from GPO by calling 202-512-1530. Certain significant Board decisions are also available on the OPM *Mainstreet* BBS, 202-606-4800.

# LITIGATION

## JUDICIAL REVIEW AND LITIGATION

Final Board decisions in both appellate and original jurisdiction cases are subject to judicial review by the United States Court of Appeals for the Federal Circuit, with two exceptions. The exceptions are decisions in mixed cases involving allegations of discrimination and decisions in Hatch Act cases involving State or local government employees, both of which may be appealed to an appropriate U.S. district court.

The Director of OPM may petition the Board for reconsideration of a final decision, and may also seek judicial review of a final Board decision that the Director determines will have a substantial impact on a civil service law, rule, regulation, or policy.

During fiscal year 1998, the U.S. Court of Appeals for the Federal Circuit issued decisions on review of 450 final Board decisions, and left the Board decision unchanged in 92 percent of those. The Board actively litigated 101 cases in the Federal Circuit during the fiscal year.

The Whistleblower Protection Act of 1989 granted the Board litigating authority to defend its appellate decisions except where the merits of the underlying personnel action or a request for attorney's fees is at issue. In addition, the Board is a respondent in all cases in which the Director of OPM seeks judicial review of a Board decision. The Board also litigates appeals from Board decisions in cases brought by the Special Counsel.

Other active litigation includes discrimination cases filed in various Federal district courts when the Board is a defendant; cases in which the Board intervenes; cases where Board employees are sued in their personal capacities for actions taken by them within the scope of their employment; administrative litigation arising out of appeals to the MSPB filed by the Board's own employees; and cases brought by the Board to enforce subpoenas issued by the Office of Special Counsel and the Board's administrative judges.

The Office of the General Counsel monitors cases involving appeals from decisions issued by the Board under its appellate jurisdiction. The employing agency is the named respondent in these cases and is defended by the Department of Justice. Board activities in connection with monitored litigation include responding to inquiries from the parties or the court, informing the Board of significant cases scheduled for argument or decision by the court, and preparing summaries of published decisions. During FY 1998, attorneys in the Office of the General Counsel monitored almost 600 cases, including both new filings with the court and cases carried over from the previous year.

## SUPREME COURT

Although it rarely does so, the Supreme Court may review a Federal Circuit decision in an MSPB case if a petition for *certiorari* is filed and the Court, in its discretion, decides to hear the case. In FY 1998, the Supreme Court reviewed one Federal Circuit case, *Lachance v. Erickson*, originating from the Board.

*Lachance v. Erickson*, 118 S. Ct. 753 (1998)

In a case that overturned Federal Circuit precedent, *Grubka v. Department of the Treasury*, 858 F.2d 1570 (Fed. Cir. 1988), and Board caselaw conforming to that precedent, the Supreme Court held that neither the due process clause of the Fifth Amendment nor the CSRA prohibits a Government agency from disciplining an employee for making false statements in response to an inquiry about the employee's alleged work-related misconduct. In *Erickson*, the Federal Circuit had reaffirmed its precedent in *Grubka*, stating that discipline cannot be imposed for such false statements.

In reversing the Federal Circuit, the Supreme Court relied on its previous rulings that a criminal defendant's right to testify does not include the right to commit perjury. The Court found that it was immaterial to the due process inquiry whether the employees charged with falsification had made the false statements under oath, as would be the case in a criminal perjury charge. The Court also rejected the argument that if employees were not allowed to make false statements, they might be coerced into admitting the misconduct, whether they believed they were guilty or not, in order to avoid the more severe penalty of removal that could result from a falsification charge. The Court noted that in a previous case it had found a similar argument "entirely frivolous." If answering an agency's investigatory questions would expose an employee to criminal prosecution, the employee could exercise his or her Fifth Amendment right to remain silent, the Court stated.

## FEDERAL CIRCUIT

The following are summaries of significant decisions by the Federal Circuit on review of Board decisions during the fiscal year:

*Yates v. Merit Systems Protection Board*, 145 F.3d 1480 (Fed. Cir. 1998)

The court held that an appellant need not expressly invoke the Uniformed Services Employment and Reemployment Rights Act and expressly assert a claim of

discrimination based on service in a uniformed service in order to satisfy the Board's jurisdictional requirements under the statute. The court found that the appellant's factual assertions indicated that she may have been deprived of benefits of employment--two weeks of training and her 30-day evaluation--because of her reserve duty. Under USERRA, a person's obligation for service or membership in a uniformed service may not be "a motivating factor" in the denial of any benefit of employment. In view of the liberal standard applicable to USERRA claims, the court held that an appellant may invoke the Board's jurisdiction under USERRA simply by articulating sufficient facts.

*Lachance v. Merit Systems Protection Board*, 147 F.3d 1367 (Fed. Cir. 1998)

The court clarified the general rule that an agency is required to prove all elements of a charge when it proposes to discipline an employee, but does not need to prove all the facts that it alleges in support of the charge. The court noted that a caveat applies in cases where an agency presents a broad and general charge, such as "unacceptable and inappropriate behavior." In such cases, the court held, the Board must examine the underlying factual allegations to determine what conduct the agency is relying on as the basis for its proposed discipline.

Here, the specification set forth two alternative characterizations of the charge, one that required intent and one that did not. The court found that the Board was correct in looking at the factual allegations underlying the general charges. However, after determining that the agency had not proven intent to interfere with an agency investigation, the Board should have considered the alternative charge and determined whether, regardless of his intent, the employee's actions were improper because he should have known that a subordinate would perceive his

conduct as intimidating. Therefore, the court reversed the Board because it found that the specification did not require the agency to prove the employee's intent.

*Markland v. Office of Personnel Management*, 140 F.3d 1031 (Fed. Cir. 1998)

*O'Brien v. Office of Personnel Management*, 144 F.3d 1458 (Fed. Cir. 1998)

In these cases, the court clarified the legal test concerning the creation of competitive areas when an agency conducts a RIF. Generally, in the event of a RIF, employees compete for retention with other employees in their "competitive area" whose job classifications place them in the same competitive level. In both of these cases, the court rejected arguments that the competitive area should have encompassed a larger number of employees and affirmed the Board's decisions. In *Markland*, the court agreed with the Board majority that the appellant's office was properly established as a separate competitive area and affirmed the appellant's RIF separation. The court stated that the head of an office need not have appointing authority in order for the office to be designated as a separate competitive area in a RIF. An agency may establish a departmental office as a separate competitive area if it is a major subdivision of the agency and is separately organized and clearly distinguished from other offices in operation, work function, staff, and personnel management. The personnel management prong of this test is satisfied if the office head has the authority to take or direct personnel actions (i.e., the authority to assign duties, establish and abolish positions).

In *O'Brien*, the court stated that neither the statute nor the implementing regulations that govern the order of retention for employees in a RIF guarantee an employee the opportunity to compete with other employees for retention. In construing 5 U.S.C. § 3502, the court found that the statute governing order of retention merely requires that OPM regulations "give due effect" to the factors of tenure, length of service, military preference, and performance ratings.

The creation of a very small competitive area, although it limits an employee's chances to compete successfully for retention, does not violate the statutory mandate of section 3502.

*Harris v. Department of Veterans Affairs*, 142 F.3d 1463 (Fed. Cir. 1998)

Under certain conditions set forth at 5 C.F.R. § 844.202(a), an agency has an obligation to assist an employee in filing a disability retirement application with OPM if the employee has at least 18 months of Federal civilian service and is incapable of making a rational decision whether to file and process the application. In this case, the court ruled that the agency's duty is not discharged if the employee has filed an application on his own. The court found that the appellant was incapable of making a rational decision whether to file and process the disability application. The court vacated the Board's decision and remanded the case for the Board to determine whether the agency had complied with 5 C.F.R. § 844.202(a) and whether the agency had breached its obligations under a settlement agreement it had entered into with the appellant.

*New v. Department of Veterans Affairs*, 142 F.3d 1259 (Fed. Cir. 1998)

The court found that the Board had jurisdiction over an appeal by an employee who had requested priority restoration to her former position following her recovery from a compensable injury. When an agency removes an employee who has a compensable injury because the employee refuses to return to work, and no suitability determination has been made by OWCP, a sufficient nexus exists between the compensable injury and the removal to entitle the employee to priority consideration for restoration, the court held. As a general rule, an employee is required to comply with instructions from his or her agency acting within its authority, but compliance with an agency return-to-work order is not required when OWCP has made no suitability determination and a return to work would place the employee in a clearly dangerous circumstance.

*Bolton v. Merit Systems Protection Board*, 154 F.3d 1313 (1998)

The issue in this case was whether a Postal Service employee was a supervisor or management employee so that he was within an exception to the general rule that the Board does not have jurisdiction over appeals by non-preference-eligible Postal Service employees. The court found that a Postal employee is a “supervisor” if he or she has the authority to discharge or discipline another employee or effectively recommend that another employee be discharged or disciplined, or responsibly direct

the actions of others. If these two factors are not present, the Board must consider whether the employee performs other supervisory functions listed in the National Labor Relations Act. The court found that a “management employee” is one who makes policy recommendations related to his or her experience and qualifications. After considering these factors and finding that the appellant’s other “supervisory” functions were performed “without significant discretion or independent judgment,” the court affirmed the Board’s decision that it lacked jurisdiction over the appeal.

The U.S. Court of Appeals for the Federal Circuit maintains a Web site at [www.fedcir.gov](http://www.fedcir.gov), which provides quick access to two other Web sites that make the court’s decisions available.

# STUDIES

## THE STATUTORY STUDIES FUNCTION

The CSRA assigned the Board, in addition to its adjudicatory functions, responsibility for reviewing the significant actions of OPM and for conducting studies of the civil service and other merit systems in the Executive Branch. The studies function complements the Board's adjudicatory activities by reviewing Federal human resources management policies and practices on a systemic basis. The Board is uniquely situated to provide neutral, independent, and non-partisan reviews and assessments as part of the ongoing effort to develop and maintain an effective and efficient civil service.

The Board typically solicits potential study topics from a wide variety of sources in developing its OPM oversight and studies agenda. The Board's studies are usually governmentwide in scope, and are conducted through a variety of evaluation methods, including mail and telephone surveys, on-site systems reviews, written interrogatories to agencies, formal discussions with subject-matter experts, computer-based data analysis, and reviews of secondary source materials.

The Board's reports on the results of its studies are addressed to the President and the Congress, as required by law, and also are made available to a large secondary audience of Federal agency officials, employee and public interest groups, labor unions, academicians, and other individuals and organizations with an interest in public personnel administration.

## SUMMARIES OF REPORTS ISSUED IN FY 1998

*The Changing Federal Workplace: Employee Perspectives* (March 1998) - This report presents results from the Board's fifth triennial Merit Principles Survey, conducted in 1996. These surveys are sent to a representative, randomly-selected sample of Federal employees to elicit their views on a number of workplace issues, such as working conditions, job satisfaction, and the quality of coworkers and supervisors. The 1996 survey also included questions that permitted an evaluation of the effect of various forces for change on organizational operations and employee productivity.

The survey found that Federal employees believe that budget cuts, agency downsizing, and reinvention efforts have had both positive and negative effects on Government operations. Almost half of the respondents said that the productivity of their work units had improved during the preceding two years and that they had more flexibility in the way they perform their jobs. Despite downsizing, 44 percent thought their work units had enough people to do the job in 1996--virtually the same percentage that gave this answer to the same question on the 1993 survey.

On the other hand, most Federal workers also said that budget cuts have had a negative effect on mission accomplishment in their organizations. Almost no respondents said that downsizing had helped their organizations, and many believed that it had eroded institutional memory.

Employees also had mixed assessments about the impact of Federal reinvention efforts. Only about a quarter said that labor-management partnerships had helped their organizations to better accomplish their missions. Similarly, while

about half the respondents gave no opinion, less than 30 percent of those who expressed an opinion thought that reinvention efforts had been successful in bringing positive changes to the Government.

Employee views in other areas were much the same as in 1993. Overall job satisfaction was relatively positive, with 70 percent of respondents saying they were satisfied with their jobs. Dealing with problem employees continued to be a significant concern for many Federal supervisors. Federal employees were also just as likely as in 1993 to think they were victims of discrimination based on race. Over 40 percent of the respondents said that they had only minimal or no protection against prohibited personnel practices, with unfair preferences in hiring and promotion actions being the prohibited personnel practice of greatest concern.

The report concluded with several recommendations. Agencies were encouraged to ensure that their efforts to reduce expenditures also include a sincere effort to involve employees in attempts to improve their operations. Where an agency's culture sanctions not dealing effectively with problem employees, changes should be made to ensure that employees are held accountable for their performance. Systems should be in place to ensure that supervisors are held accountable for their decisions, given the greater decentralization and delegation of personnel management authorities. Finally, both OPM and individual agencies should make efforts to ensure that they are able to find and recruit high-quality applicants for Federal positions.

*Federal Supervisors and Strategic Human Resources Management* (June 1998) - This report was based on data collected by MSPB in over 17 years of research on Federal supervisors. In it, the Board found that supervisors do not appear to be achieving the right balance between short-term and long-term human resources management goals. While most supervisors do a commendable job of performing the technical work of their units, they have a much harder time with human resources management tasks. Supervisors' personnel decisions tend to respond to immediate

needs rather than to the long-term health of the workforce and the organization's ability to meet its strategic goals.

Its years of research in the area of Federal supervisors led the Board to conclude that two factors--organizational culture and the supervisory selection process--have been instrumental in creating a corps of Federal supervisors who tend to give priority to short-term personnel needs over long-term strategies. Agency cultures may actually be rewarding supervisors for taking the short-term approach. Furthermore, Federal budget cycles may be forcing supervisors to make hiring and training decisions within the confines of the current fiscal year's appropriation, even if delaying or spreading out such actions would lead to better long-term results. A focus on technical qualifications when selecting supervisors may be leading to hiring supervisors who do not fully appreciate the importance of human resources management decisions in making the technical accomplishments of the work unit possible.

The report recommends that agencies develop cultures that encourage supervisors to make personnel decisions that give weight to strategic goals for the organization as well as the short-term goals of the work unit. It also recommends that agencies change their approach to supervisory selection, training, and involvement in strategic planning.

*Civil Service Evaluation: The Evolving Role of the U.S. Office of Personnel Management* (July 1998) - This report addresses the role that OPM plays in conducting Governmentwide oversight of the merit-based civil service system. It focuses on changes in OPM's evaluation system since the Board last reviewed it in 1992.

A 1995 OPM reorganization led to the establishment of the Office of Merit Systems Oversight and Effectiveness, bringing together several existing OPM units. The new office was given responsibilities to promote a merit-based civil service, identify opportunities for improving Federal personnel policies and programs, and help agencies meet their mission goals through effective recruitment, development, and use of

employees. The Board found that while OPM's success in achieving these goals had been uneven, its oversight program had a generally improved image among Federal agencies.

The Board noted that a major challenge facing OPM is how to shift the focus of personnel management accountability from the human resources office to line managers. Too often, "let the manager manage" means that human resources offices take the heat when personnel decisions made by line managers are challenged. The accountability conundrum is one OPM and agencies must work together to solve.

The report states that other oversight issues OPM must address include: (1) measuring personnel management success by results, not just process; (2) developing clear standards for measuring personnel management activities and results; and (3) encouraging agencies to implement self-assessment programs to ensure compliance with personnel laws, regulations, and policies. Among the report's recommendations were that OPM take the lead in developing better means of assessing personnel management results and in developing evaluation standards, that OPM share information on best and worst personnel management practices with agencies, and that OPM oversight staff become more involved with agencies' self-assessment efforts.

## **OTHER ACTIVITIES**

In addition to reports of its merit systems studies and OPM oversight reviews, the Board produced four issues of its periodic newsletter, "Issues of Merit," during fiscal year 1998. This publication, launched in Spring 1996, disseminates findings, analyses, and recommendations from Board studies in a concise, readable format to a wide audience. Topics covered in the last fiscal year include:

- Supervisors' and managers' ratings of the competencies required for the performance of human resources management activities;
- The evolving due process rights of Federal employees;

- Dealing with poor performers;
- Supervisors' ratings of their agency personnel offices;
- What supervisors look for in applicants for Federal jobs;
- Agencies' use of the Outstanding Scholar hiring authority;
- Evaluating the programs for displaced Federal employees--the Career Transition Program (CTAP) and the Interagency Career Transition Program (ICTAP); and
- Previews of the findings from forthcoming reports.

In July 1998, the Board's studies staff completed a two-year effort with the National Partnership for Reinventing Government (NPR) to develop the first-ever NPR survey of Federal employees to determine if reinvention is working from the perspective of those doing the job. Questions cover such key areas as customer service, leadership, teamwork, employee development, streamlining, and job satisfaction. The 33-question survey includes 7 questions that duplicate questions asked on the MSPB Merit Principles Survey, permitting NPR to compare the survey results to MSPB survey data from past years to judge whether progress has been made. Other agency partners in the development of the NPR survey were OPM and the Federal Aviation Administration.

# ADMINISTRATION

## STEPS TOWARD AN ELECTRONIC ENVIRONMENT

During FY 1998, the Board began a major initiative to design and develop an integrated document management and workflow system that will include support and maintenance of imaged and electronic case records. The agency's functional requirements were analyzed, and the system proposal has been completed. This proposal recommends a phased approach with development and implementation beginning in FY 1999, using off-the shelf software, and small pilot projects leading to full implementation in FY 2000. The first phase of the system proposal includes modules for case management, document management, creation of documents using a sophisticated automated approach, and an advanced legal research tool. The next phase would allow the Board to accept on-line submission of appeals, briefs, and other case-related materials and provide access to electronic case records by all Board employees.

Also during FY 1998, the Board selected its first case for the electronic filing pilot project with the Federal Circuit, *Lachance v. White and MSPB*. In this case, the Director of OPM is challenging a Board interpretation of whistleblower law that the Director believes will have a significant adverse impact on the civil service. The case was selected because Federal agencies are on both sides of the case. The Department of Justice is representing the petitioner--the Director of OPM, and MSPB is a respondent. The non-Government respondent is represented by counsel. This ensures that at least the petitioner and one respondent possess the technical resources to participate in the project and that the other respondent has the

opportunity to participate or to object if he believes it would infringe upon his rights. The mechanism for electronic filing is to post documents to an Internet site. Participating attorneys are assigned passwords to access the site. After a document is posted, the court reviews and either accepts or rejects the document. Posted documents may be downloaded for viewing. In addition to briefs, motions, docketing statements, court orders, and decisions will be posted.

As the platform for electronic case processing, the Board replaced its outdated electronic mail system (HPDesk) with Lotus Notes, the first client-server application implemented by the agency subsequent to the completion of the local and wide area networks in FY 1997. In addition to superior messaging capabilities, Lotus Notes offers an integrated calendar, seamless Internet mail, links to Web sites through e-mail messages, discussion groups, the ability to FAX through e-mail and attach Word and Excel documents, and outstanding filing cabinet capabilities. Lotus Notes will also be used as an intranet, allowing all employees easy access to documents, manuals, notices, and other document libraries. It also provides the ability to reserve conference rooms and video equipment, and supports workflow applications requiring the signing and routing of administrative documents.

The Board continued in FY 1998 to implement other technological improvements to increase the efficiency of its staff. The Board now has video conferencing equipment available in eight of its regional and field offices. During FY 1998, 61 hearings were handled by video conference. The video conferencing equipment

has also been used in the adjudicatory process for video testimony, prehearing conferences, and settlement discussions. All of these uses helped avoid costly and time-consuming travel by MSPB judges and the parties to cases and has had a significant positive effect on initial appeal case processing productivity. Because use of this equipment can save up to \$2,500 on a single hearing, and with over 1,300 hearings held each year, there is a great potential for significant long-term savings. Administratively, the regional and field offices also were able to hold multi-office staff meetings, training sessions, and employment interviews with the video conferencing equipment. At headquarters, a second video conferencing unit was purchased in response to Board staff demand.

The Board's achievement in using video conferencing to reduce the cost of adjudication was recognized in September 1998 when Vice President Gore's Hammer Award was presented to the MSPB Video Conferencing Implementation Team, composed of staff members from both the regional offices and the Financial and Administrative Management Division.

In FY 1998, the agency undertook a study of its telecommunication system to determine how it might be improved. It also began implementing an increased capacity and speed in its telecommunication lines to increase efficiency.

### **YEAR 2000 COMPLIANCE ON TRACK**

The Board made substantial progress during the fiscal year towards the identification, correction, and testing of computer systems and hardware for Y2K compliance. The agency has replaced telephone equipment, voicemail, software, and security systems that were determined to be non-compliant. The Board expects to complete its remediation of all

systems by March 1, 1999, and to complete validation of all systems by June 30, 1999.

### **CASE PROCESSING AND STAFFING**

To operate under continuing budgetary constraints, the Board continues to streamline its workforce and focus its resources on case adjudication. The Board conducted a RIF on October 1, 1997, that abolished 15 administrative and overhead positions at headquarters. With the funds saved by this RIF, the Board was able to hire a number of temporary administrative judges in the regional offices and temporary attorneys in the Office of Appeals Counsel at headquarters. The additional administrative judges allowed the regional offices to reduce the pending backlog by nearly 700 appeals during the year. The additional attorneys at headquarters, who were hired during the latter part of the fiscal year, helped reduce the pending appeals at headquarters by nearly 400 cases during the last four months of the fiscal year.

### **HUMAN RESOURCES CROSS SERVICING**

As part of the Board's ongoing effort to reduce administrative expenses and achieve greater efficiency, it contracted with a consulting firm in fiscal year 1998 to review the agency's human resources function. The contractor recommended that the Board consider receiving human resources services on a cross servicing basis. An MSPB team then established goals and objectives for cross servicing and assessed the relative merits of three potential providers of human resources services. After this review, the Board decided to enter into an interagency agreement with the Department of Agriculture's Animal and Plant Health Inspection Service (APHIS). The agreement was signed during the summer of 1998, and the Board carried out the transition of functions during the last few months of the fiscal year. The new cross servicing agreement has given the Board access to a large human resources staff while saving significant financial resources which it has been able to apply to its adjudicatory function. Because of the large range of expertise available

through APHIS, the Board expects to benefit from their human resources services for many years.

### **PURCHASE CARD MANAGEMENT SYSTEM**

During FY 1998, MSPB worked closely with the Department of Agriculture's National Finance Center as the first cross servicing agency to implement their new Purchase Card Management System (PCMS). The system has increased efficiency in tracking, reconciling, controlling, and paying for purchases against Government credit cards and convenience checks. It has greatly reduced the time spent on processing credit card transactions and also provided more information on regular monthly financial reports. The system has several

additional benefits, including alerts and statistical sampling, reduced cost through reduction in the use of purchase orders, an automated line to the Federal Procurement Data System, and an ad-hoc reporting capability.

### **ELECTRONIC FUNDS TRANSFER**

During the fiscal year, the Board worked to implement the Federal law requiring almost all payments to be made by electronic funds transfer. A number of contractors were assisted in signing up for the program, and several others were provided assistance in signing up for the credit card system. This has made transactions for MSPB more efficient. The agency processes the transactions faster and at lower cost, and vendors receive their payments more quickly, safely, and inexpensively.

## FINANCIAL INFORMATION

The financing sources and current obligations incurred for fiscal year 1998 are listed below. All figures are in thousands of dollars.

### Financial Sources

Current Year Appropriations	\$25,290
Civil Service Retirement and Disability Trust Fund reimbursements	2,430
Other	22
Total financing sources	27,742

### Obligations incurred - current

Personnel	17,671
Personnel benefits	3,094
Benefits for former personnel	97
Travel and transportation	410
Transportation of things	56
Rent-GSA	1,880
Communications and utilities	593
Printing and reproduction	109
Other services	3,064
Supplies and materials	182
Equipment	518
Total obligations incurred	27,674

Unobligated balance	\$68
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## FOR ADDITIONAL INFORMATION

MSPB's World Wide Web site contains information about the Board and its functions, as well as copies of decisions, reports, and publications. Complete copies of decisions from July 1, 1994, are available for downloading, as are copies of the weekly Case Summaries and recent reports and studies. The address of the Board's Web site is **<http://www.mspb.gov>**.

The MSPB Library on the Federal Bulletin Board can be accessed by computer modem at **202-512-1387** seven days a week. User assistance is available from GPO from 8 AM to 4 PM Eastern time, Monday through Friday, by calling 202-512-1530. The Bulletin Board can also be accessed via the Board's Web site.

The Board's toll-free telephone number is **1-800-209-8960**.

Comments or questions regarding MSPB, the bulletin board, or the Web site may be sent to the Board's e-mail address, **[mspb@mspb.gov](mailto:mspb@mspb.gov)**.

# CUSTOMER SERVICE STANDARDS

*The Merit Systems Protection Board has two core missions: (1) Adjudication of appeals brought to it under the provisions of law and regulation, and (2) Oversight of the Federal merit systems. These two missions are authorized in the Civil Service Reform Act of 1978.*

*We have established these standards to assure our customers that they receive the quality of service to which they are entitled and to assure the public as a whole that we are ably promoting and protecting the Federal merit systems.*

## **MISSION I -- Adjudication of Appeals**

1. We will make our regulations easy to understand and our procedures easy to follow.
2. We will process appeals in a fair, objective manner, according respect and courtesy to all parties.
3. We will promptly and courteously respond to customer inquiries.
4. We will facilitate the settlement of appeals.
5. We will issue readable decisions based on consistent interpretation and application of law and regulation.

6. We will issue decisions in initial appeals within 120 days of receipt and within 110 days on petitions for review, except where full and fair adjudication of an appeal requires a longer period.

7. We will make our decisions readily available to our customers.

## **MISSION II -- Oversight of the Federal Merit Systems and the U.S. Office of Personnel Management**

1. We will conduct research on topics and issues relevant to the effective operation of the Federal merit systems and the significant actions of the U.S. Office of Personnel Management; perform sound, objective analysis; and where warranted, develop practical recommendations for improvement.

2. We will issue timely, readable reports on the findings and recommendations of our research and make these reports available to all interested individuals and parties.

3. We will enhance the constructive impact of our studies and reports through outreach efforts.

*We will conduct surveys of our customers from time to time to see how well we are meeting these standards. However, if at any time, you have comments or suggestions concerning our service, we invite you to provide feedback to the Board, through the Clerk of the Board, at 1120 Vermont Avenue, NW, Washington, DC 20419, telephone (202) 653-7200, FAX number (202) 653-7130. Electronic mail may be sent over the Internet to [mspb@mspb.gov](mailto:mspb@mspb.gov).*