

**From:** John Yeressian [REDACTED] B6  
**Sent:** Thursday, January 03, 2013 4:20 PM  
**To:** MSPB  
**Cc:** [REDACTED] B6  
**Subject:** Public Comment on New Appeal Form

Public Comments regarding the new appeal form:

By the way, I stumbled upon the notice for public comments regarding the new appeals form. It is poorly advertised and no one knows about it.

1. The new proposed form is too long. It should be a much shorter, faster, and quicker form. Much of the other details, if necessary, can be handled once the appeal is filed. An applicant simply needs to state that he/she chooses to file an appeal and the agency from which he/she is appealing. This avoids all the confusion in filing and missing a deadline, particularly for someone who does not have an attorney and this is their very first experience with MSPB. As in my personal case, the agency NEVER gave me information regarding MSPB appeals. I came to learn about it on my own. That leads me to the next question on the form about probationary period appeal. If an appellant is appealing a probationary period appeal then most likely the agency probably never even informed him/her about MSPB appeal rights - so I do not know how the MSPB would be able to inform that person of their rights. It would be best if the MSPB was automatically fed information about adverse actions from all agency's and the MSPB also sends the individual a copy of the form. Clearly, an agency would not go out of their way to inform an appellant about their MSPB rights if the agency failed to do so in the first place. More importantly, the agency is not subjected to any disciplinary action, fines, or penalties, for failing to inform an Appellant who has experienced an adverse action about their appeal rights.

2. The 30 day filing period is simply not enough time. It should be extended to 90 days, or at minimum 60 days. Appellants are unfamiliar with MSPB. In my case, I was never informed about my MSPB appeal rights. I came to learn about it on my own without even knowing that the MSPB exists or what the MSPB is even about. In fact, I came to learn about it by complete mistake or accident by hiring an EEO attorney who only came to learn about it when something came in the mail regarding an MSPB appeal. The agency would have never informed me about MSPB and I would have never found out had this "chance" occurrence never happened. The agency was never penalized or disciplined for their failure to inform me of my MSPB appeal rights. Instead, the agency chose to remain quiet about my MSPB appeal rights. Had the 30 days deadline passed, the agency would have argued that it was too late to file an MSPB appeal and the administrative judge would have dismissed the appeal. In my experience the administrative judge's are highly biased and favor the agency. It is extremely rare for an Appellant to prevail in MSPB, in fact, so much so, that most attorney's say you have a better chance of getting hit my lightning - and it is a waste of money. Appellant success rates are less then 1.9% - especially when I went through the process. I believe at its peak, Appellants may have had a 3% success rate, but nonetheless the MSPB is not an Appellant-friendly forum and it is frowned upon by those Appellants that have went through the process. Even a simple reading of online federal blogs reflects the poor success rates of Appellants.

3. The form needs to simplify the instructions. The instructions are too long and does not give any layman language or timelines as to how long the process may take. I filed my appeal in October 2008 and it was not decided upon until January 2010 and is now in appeals again because the agency refused to reinstate me even after I won my case. In addition, the agency has still not provided for my backpay that was ordered in the award judgment of January

2010. MSPB has absolutely no power to enforce their own decisions - they are really worthless. The form should inform Appellants of the possible timeframes that their case may take to process.

4. The form needs to specify that attorney fees may not be granted in full. I won my case and the biased administrative judge reduced my attorney fees - basically rendering a huge blow to my financial investment in a lawyer. Even after I was granted backpay I lost more by fighting the case and winning than I would have gained by simply walking away and letting the agency get the better of me even though the adverse action was wrong/unlawful. I won my matter but at what cost? I tried to mediate with the agency for a clean record but the agency refused. I had no choice but to fight the case. After I prevailed the case, the agency went to the administrative judge and requested a settlement conference so that I would not return back to the agency - basically making my entire fight useless.

5. Appellants should be allowed to hire attorneys on a contingency basis - this needs a change in the MSPB law in how it is currently written. By doing so, it would help to level the playing field a little bit because an Appellant who has just lost his/her job simply cannot afford to hire an attorney. The agency almost/always has an attorney representing them. I do not know the statistics on agency representation, but I can confidently say that probably 100% of agency's are represented by their own in-house counsel. I believe less than a 1/3 of Appellants may be represented by counsel (and this is probably a very liberal estimate - it might be a lot less).

All in all, the MSPB is a complete waste of money and large changes need to be implemented if it wants to be successful. While MSPB stands for Merit Systems Protection Board, it is more of an agency protection board more than anything else. The MSPB needs to clean house by hiring less biased judges or at minimum holding

training for administrative judges to enforce the idea that this is a personnel matters board and not an agency board. Agency's see the MSPB as their playground and toy with Appellants. Like I said, I won my case at a cost of close to \$100k. I lost my house, health insurance, my sanity, and my family (with kids), while I was fighting this matter. The MSPB administrative Judge only awarded me less than half of what I paid for attorney fees. I believe it was \$36k in attorney fees. I won my case with reinstatement. I was never reinstated. The agency refused to allow me back into the building. I was supposed to get backpay in the \$20k range (minus all taxes would be closer to \$10K), however, the agency never paid that amount and I cannot find a way to make them pay for it - the MSPB decision was useless. To make matters worse, I paid income taxes on the backpay that I never received.

I can continue my analysis no the MSPB, but since this public comment was in regards to the new appeal form I would like to simply keep it at that. Please share my comments with MSPB Chair and others.

Thank you,  
John Y