

ISSUES OF MERIT

Fall 2014

a publication of
the U.S. Merit Systems
Protection Board,
Office of Policy
and Evaluation

WHAT'S INSIDE

Director's Perspective
Page 2

Implications of
Appointing Authorities
Page 4

Position Descriptions
Page 5

Reasonable
Accommodation
Page 6

MSPB's 2013
Adjudication Activities
Page 7

Focus Surveys: A Tool for Exploring Agency Survey Results

Agencies such as OPM or MSPB survey Federal employees to obtain their perceptions or attitudes about a variety of work and workplace characteristics. These surveys measure broad topics such as employees' satisfaction, commitment, and engagement levels; they do not elicit employee attitudes about events and concerns within a particular agency, sub-agency, or work unit. If an agency is interested in understanding employees' perceptions of in-house issues such as a recent organizational restructuring or a new employee development program, personnel policy, training initiative, leadership change, or technology introduction, agencies must administer smaller, more tailored, *focus surveys* to their employees.

Focus surveys are short (5-10 minutes and 10-20 questions) and have a specific goal such as identifying employee concerns or soliciting program improvement ideas. For example, changes in the availability of training resources may be important to employees who have come to rely on such support. Leadership may administer a brief survey asking for perceptions of impact and ideas for resolution while providing a voice for employees reluctant to express themselves in other ways. Focus surveys can also be used to follow up on patterns identified in Governmentwide surveys, such

as OPM's Employee Viewpoint Survey (EVS) or MSPB's Merit Principles Survey (MPS). For example, the MPS survey may reveal employee concerns about workplace fairness. These opinions may be explored further by an agency, through precise questions about the procedures for distributing resources and how individuals are treated in the process.

A focus survey has several steps, as outlined below.

1. Identify areas of concern.

Agencies may wish to conduct employee focus groups to discover important issues and to develop associated questions. This communicates to employees that leadership is aware of specific issues and allows for more tailored questions.

2. Design the survey. Focus on only the areas of concern identified. Write questions only on topics for which you are able to take action. Hold the survey length to 5-10 minutes.

3. Communicate about the survey. Inform employees: (a) the purpose of the survey; (b) when and how you will share the results; and (c) how you will use the information they provide.

4. Field the Survey. Your agency may have tools for designing and administering a simple survey. If not, many vendors offer free or relatively low-
continued, page 3

ISSUES OF MERIT

U.S. Merit Systems
Protection Board

CHAIRMAN

Susan Tsui Grundmann

VICE CHAIRMAN

Anne M. Wagner

BOARD MEMBER

Mark A. Robbins

Office of Policy and Evaluation

DIRECTOR

James Read

**DEPUTY
DIRECTOR**

James J. Tsugawa

Our Mission

The MSPB Office of Policy and Evaluation conducts studies to assess the health of Federal merit systems and to ensure they are free from prohibited personnel practices.

Issues of Merit

We offer insights and analyses on topics related to Federal human capital management, particularly findings and recommendations from our independent research.

Reprint Permission

We invite you to reprint any of our articles. If you do, please include the following attribution: *Reprinted from Issues of Merit, a publication of the Office of Policy and Evaluation, U.S. Merit Systems Protection Board.*

For More Information

Contact us at:
www.mspb.gov/studies
STUDIES@mspb.gov
202-254-4802 x4802
1-800-209-8960
V/TDD: 202-653-8896
(TTY users may use the Federal Relay Service, 800-877-8339)

U.S. Merit Systems Protection Board
Office of Policy and Evaluation
1615 M Street, NW
Washington, DC 20419

DIRECTOR'S PERSPECTIVE

Organizational Success and Individual Performance

How would you react if the players on a baseball team that finished the season with a losing record bragged about their individual accomplishments? Could each of the players be considered to have had a great season when their team had a bad one?

Now consider an executive agency that is struggling to meet its mission. And let's leave aside the often-difficult exercise of defining success in Government, where metrics commonly used in the private sector such as market share and profitability are not relevant. For purposes of discussion, let's assume that this agency has framed its goals under the Government Performance and Results Modernization Act (GPRAMA) appropriately. You could reasonably question what is going on if you learned that individual agency employees overwhelmingly receive favorable performance ratings while the agency is not meeting its agency goals. But what specifically is wrong?

One possible explanation is that the performance standards for individual employees are not linked to agency-level goals. Last year, the Government Accountability Office (GAO) found that only about 60% of Federal managers use information about organizational performance when setting expectations for individual employee performance.¹ GAO further found that less than half of Federal managers agreed to a "great" or "very great" extent that information about organizational performance is

"easily accessible" and "available in time to manage [their] programs."² Thus, many Federal managers are not adhering to guidance from the Office of Personnel Management, which states that individual performance expectations should "channel [employees'] efforts toward achieving organizational objectives."³ In some agencies the problem may be an ineffective mechanism for transmitting information about organizational goals from senior managers who formulate them to line managers who are responsible for individual performance management. Inertia could also be a factor; if employee performance standards are routinely rolled over from year to year without change while agency mission requirements evolve, a disconnect may develop over time between what is considered to be individual employee success and the extent to which the organization succeeds.

Another possible explanation for favorable individual performance ratings in a failing agency or program is a lack of resources. Fielding a team of six baseball players against an opponents' customary nine is not a winning formula. Likewise, a shorthanded work unit is unlikely to meet its objectives, even if the staff is putting out maximum effort on an individual level. Or, if skill gaps develop over time in an agency workforce, then the sum total of individual employees all giving their best effort may still be less than what the organization needs.

Individual employees of an agency in

2. Id. p. 34.

3. This guidance appears at: <http://www.opm.gov/policy-data-oversight/performance-management/overview-history/>.

1. GAO-13-518, *Managing for Results[:] Executive Branch Should More Fully Implement the GPRA Modernization Act to Address Pressing Governance Challenges*, p. 48 (June 2013).

continued, page 3

Director's Perspective

(continued from page 2)

freefall might be deemed successful when work processes are not adequately geared to accomplishment of the agency's mission. Here too, inertia may come into play; an agency's failure to adopt new technology or adapt to changes in the external environment, for example, may result in individual employee "success" under outmoded ways of working. Yet another possible explanation for a mismatch between individual performance ratings and organizational success is that the information supporting individual ratings is flawed or even fabricated.

If you are a manager in an agency where the ratings that individual employees typically receive correspond to the results your agency reports under GPRAMA, congratulations. In terms of accountability, you are doing it right. If, however, most of the employees you manage receive a favorable rating but your program is in crisis, consider the following steps:

- Make better use of agency-level performance information when setting individual performance

Focus Surveys...

(continued from page 1)

cost options for short web-based surveys.

5. Collect and analyze the survey responses.

6. Report the survey results. Be candid about any unfavorable results, as honesty goes a long way toward increasing organizational trust.

7. Act on the results. Select at least one area for action. Following any survey effort, it is essential to show employees exactly how the results of the survey are incorporated into leadership's decision making and how employees' views are used to better manage the workplace. Agencies must communicate how the results figure into the business process—that they are taken seriously and may prompt action.

8. Follow up. Conduct subsequent interviews, focus groups, or additional focus surveys on any themes or patterns that emerge to better understand the findings.

Focus surveys are an effective way to explore in greater detail—at a local level—employees' attitudes about work and workplace characteristics. Short, targeted, and fast, focus surveys are a tactical tool that leaders can use to enhance and complement larger Governmentwide survey efforts. ❖

expectations. This requires both access to timely agency-level information and intelligent integration into individual metrics.

- Obtain more resources, or reallocate resources. Money and staff are tight in many agencies so this may not always be a viable solution.
- Invest in employee training and development. This also requires resources and a willingness to take the long view.
- Undertake workforce reshaping.
- Modify work methods on an individual basis or a system-wide basis.
- Audit the information that underlies individual performance ratings.

Before taking action, however, it is important to determine why there is a disconnect between individual performance ratings and organizational success. ❖

James Read

Director, Policy and Evaluation

New! Check out MSPB Studies *Flash* on Mentoring

Mentoring refers to a developmental relationship that is typically between a more experienced individual (the mentor) and a less experienced individual (the mentee).

When appropriately implemented, mentoring can benefit mentors, mentees, and agencies alike. For mentors, there can be improved coaching, counseling, listening, and modeling skills while mentees can gain crucial job knowledge and experience, as well as networking opportunities. Agencies can benefit through knowledge transfer and support of a continuous learning environment, which are both important for continued mission accomplishment. Yet, in order to realize such benefits, agencies have several key decisions in designing their mentoring program.

For more information see the article "Mentoring: Benefits and Considerations," on MSPB's *Studies Flash* web page. You may want to bookmark this page to check periodically for new *Flash* articles.

How You Hire and Who You Hire: The Implications of the Appointing Authority

The first merit principle states that “recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a workforce from all segments of society... which assures all receive equal opportunity.”¹ This idea of fair and open competition for filling jobs is fundamental to Federal merit systems. The methods that agencies choose to hire new employees (that is, which hiring authorities they use) can affect the extent to which this merit principle is made a reality. These choices may have far-reaching consequences for the future composition of the Federal workforce.

As part of our upcoming report on fair and open competition, we reviewed hiring data from the Central Personnel Data File (CPDF).

Our review revealed a trend that we want to bring to the attention of Federal agencies and hiring managers. In 2000, 43% of the employees newly hired into the Federal government were female. By 2012, the proportion of newly hired employees who were female had dropped to 37%—a 6 percentage point decrease in new female hires.²

Many factors affect the proportion of women in the applicant pool and, ultimately, the representation of women among new hires. As discussed in our 2011 report *Women in the Federal Government: Ambitions and Achievements*, there are many occupations in the American labor force in which men or women predominate. This is evident in competitive examining and student hiring, where males represented most of the new hires into the information technology, engineering, and police officer occupations (males accounted for 80%, 83%, and 92% of the new hires into these occupations, respectively).³ It is also evident in the direct hire authority, where women were

1. 5 U.S.C. § 2301 (b) (1).

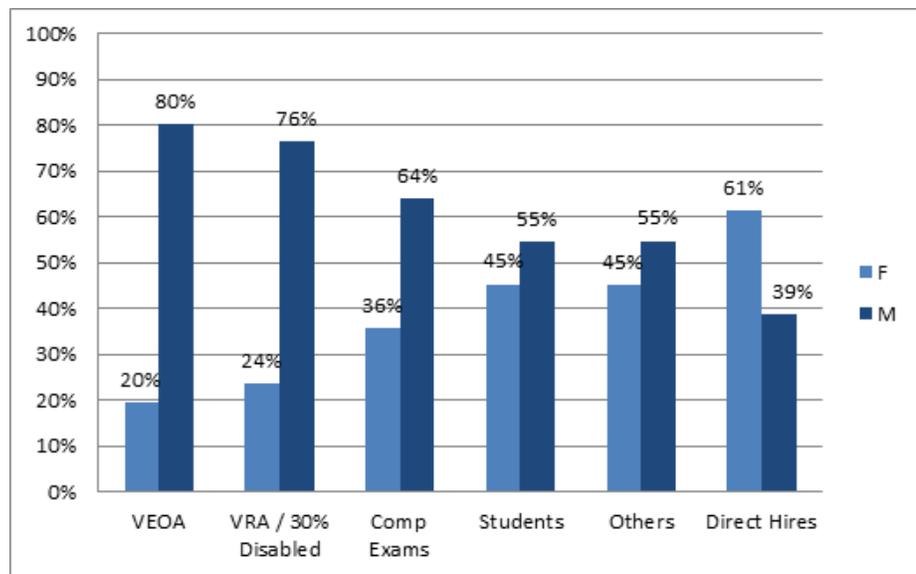
2. In 2012, 43% of the workforce was female. Data accessed from OPM, Fedscope, at: <http://www.fedscope.opm.gov/employment.asp>.

3. Data accessed from the Central Personnel Data File (CPDF), FY 2012, permanent full time employees.

hired more frequently into nursing occupations.

However, occupation does not explain everything. Choice of appointing authority matters, too, as illustrated in the figure below. Most of the methods used to hire new employees in 2012 resulted in a greater proportion of males than females entering the Federal workforce. This disparity is most notable for the Veterans Employment Opportunities Act (VEOA) and Veterans’ Recruitment Appointment (VRA) authorities, which is not surprising given that the active duty military is over 80% male.⁴ Our research shows that as use of veterans hiring authorities increased, the percentage of female new hires decreased. In addition, we found over 35% of those hired under

Gender of new hires by appointing authority in 2012.



competitive examining were veterans.

An over-reliance on too few hiring authorities may not be healthy for an organization’s culture, as those authorities may not result in a workforce that is representative of society. Agencies should take care when hiring the majority of their employees through just one or two authorities that limit eligibility to a particular segment of society. Our upcoming report on fair and open competition will discuss in depth the implications of appointing authorities for open competition and workforce diversity. ❖

4. See the Department of Defense’s report, *Population Representation in the Military Services F 2011*, p. 22 (<http://phome.defense.gov/RFM/MPP/AP/POPREP.aspx>).

Position Descriptions: Dead Letters or Living Documents?

In the Federal civil service, jobs are documented in position descriptions (PDs) that describe the key duties, responsibilities, and requirements. Because PDs provide a basis for qualification requirements and pay administration, attention tends to center on the position classification.¹ However, as shown in the figure below, PDs provide a basis for a wide range of HR decisions and activities—they are not “just for classification.”

For these reasons, it is important that PDs remain accurate. A dated PD can have unanticipated and undesired results. For example, a job announcement based on an inaccurate PD may yield few or no highly-qualified applicants, making it necessary to reannounce the job. Worse yet, if you hire someone for a job that exists only on paper, your new employee may quickly become dissatisfied and quit—and complain to friends, family, and future colleagues about your agency’s false advertising.

So, if you are a Federal manager, consider the PDs for your staff or the organization you lead. Does the organization that exists on paper also exist in practice? Do the PDs provide a realistic and useful picture of your employees’ roles and how they perform them? Are PDs

1. Position classification is the process of evaluating a position’s duties and responsibilities against established standards to assign a pay plan, occupational series, pay grade, and title.

Resources for Preparing and Reviewing Position Descriptions

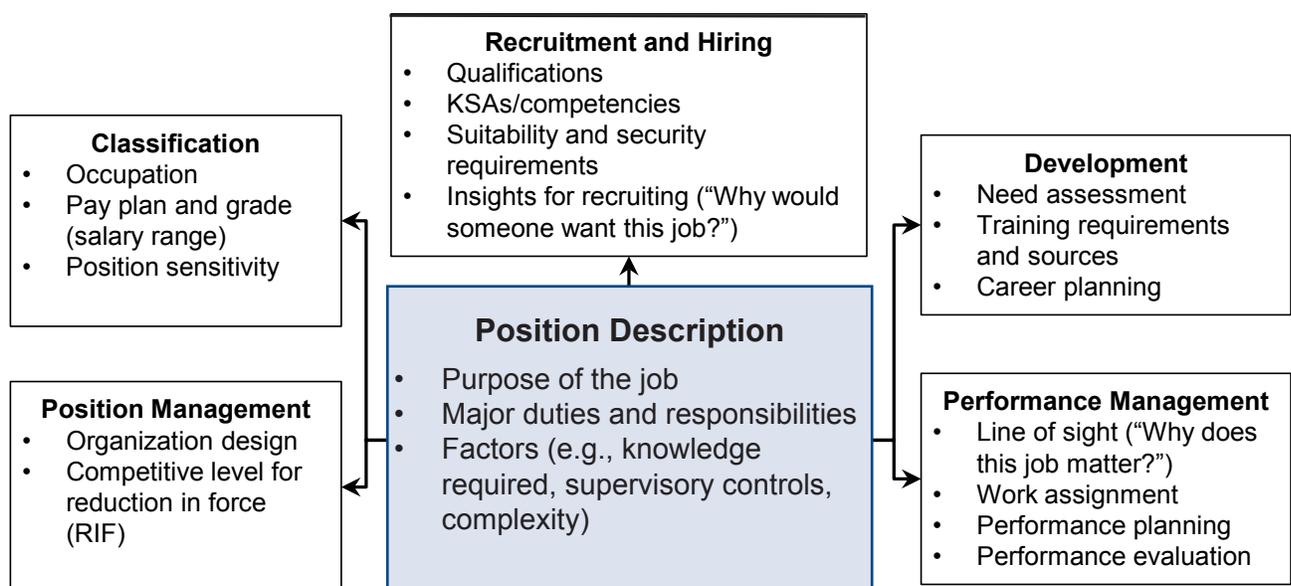
- Introduction to the Position Classification Standards
- The Classifier’s Handbook
- The FWS Job Grading System
- How to Write Position Descriptions under the Factor Evaluation System

free of information that is irrelevant or dated?

Reviewing a PD requires time and effort. Fortunately, you are not starting with a blank sheet of paper. You have, of course, the existing PD. You also can look to guides developed by OPM² and the advice and expertise of your HR staff. ❖

2. These resources listed in the box above are available through OPM’s website (www.opm.gov), with the exception (as of August 2014) of the guide on writing position descriptions under the Factor Evaluation System. That guide is available through the public web sites of many Federal agencies.

HR Applications of PDs—An Illustration



Reasonable Accommodation: A Negotiation

In its guidance, the Equal Employment Opportunity Commission (EEOC) makes it clear that an employee's request for reasonable accommodation for a disability can be made in "plain English" and that such a request triggers "an informal, interactive process between the individual and the employer."¹ Two recent Board decisions highlight that the employee's role in the process does not end with the request, while a 2011 case illustrates that an agency must not disregard such requests. Combined, these cases demonstrate the importance of both sides taking part in discussions in good faith.²

In *Miller v. Department of the Army*, 121 M.S.P.R. 189 (2014), the employee's position required that she record and transcribe hearings. She requested that the hearings be conducted in a location near her office because of difficulties with her knee, and the agency granted this request for more than three years. However, the agency's situation changed, and it determined that the location for hearings would have to be moved. The agency offered the employee several options in an attempt to accommodate her, but she found none of them acceptable and insisted that the agency must provide the same accommodation that she had received in the past.

Ultimately, the agency performed a fitness for duty exam and then removed the employee for medical inability to perform her duties. The employee appealed the removal to MSPB. The Board held that the employee failed to establish that the agency violated its duty of reasonable accommodation because she was not entitled to the accommodation of her choice and because the agency acted within its discretion to offer her reasonable and effective accommodations, all of which she declined. The Board also held that, in light of the employee's repeated refusals to accept any of the agency's numerous offers of reasonable accommodation, the penalty of removal was reasonable under the circumstances.

Similarly, in *Brown v. Department of the Interior*, 121 M.S.P.R. 205 (2014), the employee was removed for medical inability to perform her duties. On appeal, the Board found that the employee repeatedly thwarted the agency's many attempts to reasonably accommodate her medical restrictions. The agency had offered to reassign

the employee to one of two lower-graded positions, but the employee had "adamantly emphasized" that she would only agree to be reassigned to jobs where she would retain her law enforcement status at an equivalent grade and pay level, for which the medical evidence clearly showed she could not qualify in light of her medical restrictions.

On appeal, the Board noted that reasonable accommodation discussions are meant to be a flexible and interactive process and that courts have required the parties to act in good faith in such discussions. The Board found that the record showed that the employee's continual rejection of the agency's offers to provide her with lower-graded positions was "obstructive, not interactive." The Board held that, in light of the employee's repeated refusals to accept any of the agency's many offers to accommodate her, removal was reasonable.

In *Miller* and *Brown*, the actions of the agencies were sustained because the agencies had acted in good faith to engage their employees in the interactive process. However, when agencies do not do their part to seek solutions, the outcome of an appeal can be quite different.

For example, in *Sanchez v. Department of Energy*, 117 M.S.P.R. 155 (2011), the employee worked in a position covered by the "Human Reliability Program" (HRP). The HRP imposed strict physical and mental requirements because of the nature of the work (in this case the shipment of nuclear materials). The employee lost his HRP certification because of a "psychological or physical disorder" and the agency indefinitely suspended the employee for his failure to meet the HRP condition of employment. The employee then requested a reassignment to a non-HRP position. The agency did not offer the employee such a position, even though it later conceded that at the relevant time it may have had vacant non-HRP positions similar to the employee's position of record. On appeal, the Board held that the employee was entitled to be considered for reasonable accommodation and that the agency had failed to engage in the interactive process. The case was remanded to the administrative judge for a determination as to whether the employee would have been accommodated if not for the agency's failure to engage in the interactive process.

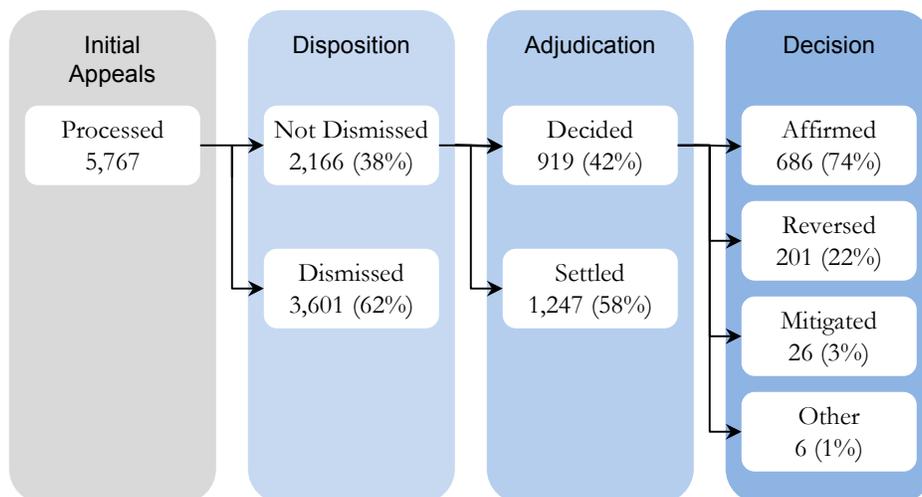
The lesson: reasonable accommodation discussions are not unilateral. Both parties have the obligation to work together to find a solution, and a party that refuses to do so in good faith can be held accountable. ❖

1. EEOC, EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, www.eeoc.gov.
2. "Good faith" may be a subjective criterion and ultimately a third party adjudicator—such as the Board or EEOC—may decide if actions were taken in good faith.

MSPB's 2013 Adjudication Activities

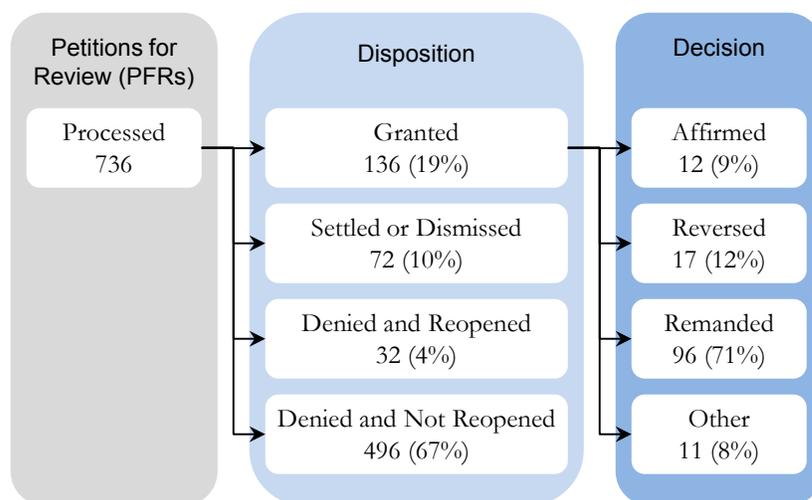
MSPB issues its Annual Report every year in the spring. FY 2013 are provided here for the convenience of *Issues of Merit* readers. Of the 5,767 initial appeals processed, 62% were dismissed for jurisdiction or timeliness. Of the remaining 2,166 cases not dismissed, 58% were settled through alternative dispute resolution procedures. Of the 919 decisions reached through adjudication on the merits, 74% affirmed the agency's decision, 22% were overturned, 3% were mitigated, and 1% were otherwise resolved.

Figure 1. An overview of initial appeal outcomes.



At headquarters (HQ), of the 736 decisions issued by the Board on Petition for Review (PFR) of Initial Decisions, 67% were denied, 19% were granted, 4% were denied but reopened by the Board, and 10% were settled or dismissed. Of the 136 cases granted review by the Board, 71% were remanded for a new decision, 9% were affirmed, 12% were reversed, and 8% were mitigated or had other outcomes.

Figure 2. Outcomes for PFRs in FY 2013.



The most significant issue related to MSPB adjudication was the filing of almost 32,400 appeals from employees who were furloughed in FY 2013 due to budget sequestration. In addition, the Whistleblower Protection Enhancement Act of 2012 (WPEA), which became effective in December 2012, resulted in substantive changes in MSPB's adjudication and reporting of whistleblower cases. More information about how furlough appeals are affecting MSPB and how MSPB is processing them is provided in the [2013 Annual Report](#). In accordance with the WPEA, information about FY 2013 whistleblower appeals is contained in MSPB's Annual Performance Report for FY 2013.

King v. Department of the Air Force on retroactive application of specific provisions of the WPEA. The Board continued to issue and post on its website nonprecedential decisions with expanded explanations of its reasoning. MSPB's new adjudication regulations related to 5 C.F.R. Parts 1200, 1201, 1203, 1208, and 1209 (summarized in more detail in the FY 2012 Annual Report) became effective on November 13, 2012. In May 2013, following a development period which included public comment, MSPB implemented a new streamlined version of its appeal form (MSPB Form 185) and updated MSPB's e-Appeal Online system to reflect the content of the new form. Further information about the new form is posted on MSPB's website at www.mspb.gov. ❖

MSPB continued its efforts to improve the transparency of its adjudication processes and decisions at HQ. The Board requested amicus briefs in *Day v. Department of Homeland Security* and in



U.S. Merit Systems Protection Board
1615 M Street, NW
Washington, DC 20419

FIRST CLASS MAIL
POSTAGE & FEES PAID
MSPB 20419
PERMIT NO. G-113

ISSUES OF MERIT

Fall 2014

Volume 19 Issue 3

IN THIS ISSUE * IN THIS ISSUE * IN THIS ISSUE

Focus Surveys. *Short, fast, targeted surveys can help agencies understand employees' perceptions. (Page 1)*



Director's Perspective. *Is there a disconnect between individual and organizational performance? (Page 2)*

Appointing Authorities. *Choices in hiring authorities have implications for the composition of your workforce. (Page 4)*



Position Descriptions. *PDs provide a basis for a wide range of HR decisions and activities. (Page 5)*

Reasonable Accommodation. *Agencies and employees need to work together to find the best solution. (Page 6)*



Adjudication Activities. *MSPB provides an overview of the outcomes of appeals processed in 2013. (Page 7)*