

TITLE 38 - VETERANS' BENEFITS

PART III - READJUSTMENT AND RELATED BENEFITS

CHAPTER 43 - EMPLOYMENT AND REEMPLOYMENT RIGHTS

OF MEMBERS OF THE UNIFORMED SERVICES

SUBCHAPTER III - PROCEDURES FOR ASSISTANCE,  
ENFORCEMENT, AND INVESTIGATION

Section 4324 - Enforcement of rights with respect to Federal  
executive agencies

**§ 4324. Enforcement of rights with respect to Federal executive agencies**

- (a)(1) A person who receives from the Secretary a notification pursuant to section 4322(e) may request that the Secretary refer the complaint for litigation before the Merit Systems Protection Board. The Secretary shall refer the complaint to the Office of Special Counsel established by section 1211 of title 5.
- (2)(A) If the Special Counsel is reasonably satisfied that the person on whose behalf a complaint is referred under paragraph (1) is entitled to the rights or benefits sought, the Special Counsel (upon the request of the person submitting the complaint) may appear on behalf of, and act as attorney for, the person and initiate an action regarding such complaint before the Merit Systems Protection Board.
- (B) If the Special Counsel declines to initiate an action and represent a person before the Merit Systems Protection Board under subparagraph (A), the Special Counsel shall notify such person of that decision.
- (b) A person may submit a complaint against a Federal executive agency or the Office of Personnel Management under this subchapter directly to the Merit Systems Protection Board if that person -
- (1) has chosen not to apply to the Secretary for assistance under section 4322(a);
  - (2) has received a notification from the Secretary under section 4322(e);
  - (3) has chosen not to be represented before the Board by the Special Counsel pursuant to subsection (a)(2)(A); or
  - (4) has received a notification of a decision from the Special Counsel under subsection (a)(2)(B).
- (c)(1) The Merit Systems Protection Board shall adjudicate any complaint brought before the Board pursuant to subsection (a)(2)(A) or (b), without regard as to whether the complaint accrued before, on, or after October 13, 1994. A person who seeks a hearing or adjudication by submitting such a complaint under this paragraph may be represented at such hearing or adjudication in accordance with the rules of the Board.

- (2) If the Board determines that a Federal executive agency or the Office of Personnel Management has not complied with the provisions of this chapter relating to the employment or reemployment of a person by the agency, the Board shall enter an order requiring the agency or Office to comply with such provisions and to compensate such person for any loss of wages or benefits suffered by such person by reason of such lack of compliance.
- (3) Any compensation received by a person pursuant to an order under paragraph (2) shall be in addition to any other right or benefit provided for by this chapter and shall not diminish any such right or benefit.
- (4) If the Board determines as a result of a hearing or adjudication conducted pursuant to a complaint submitted by a person directly to the Board pursuant to subsection (b) that such person is entitled to an order referred to in paragraph (2), the Board may, in its discretion, award such person reasonable attorney fees, expert witness fees, and other litigation expenses.
- (d)(1) A person adversely affected or aggrieved by a final order or decision of the Merit Systems Protection Board under subsection (c) may petition the United States Court of Appeals for the Federal Circuit to review the final order or decision. Such petition and review shall be in accordance with the procedures set forth in section 7703 of title 5.
- (2) Such person may be represented in the Federal Circuit proceeding by the Special Counsel unless the person was not represented by the Special Counsel before the Merit Systems Protection Board regarding such order or decision.

Source: (Added Pub. L. 103-353, § 2(a), Oct. 13, 1994, 108 Stat. 3166; amended Pub. L. 104-275, title III, § 311(11), Oct. 9, 1996, 110 Stat. 3336; Pub. L. 105-368, § 213(a), Nov. 11, 1998, 112 Stat. 3331.)

#### PRIOR PROVISIONS

A prior section 4324 was renumbered section 7624 of this title.

#### AMENDMENTS

- 1998 - Subsec. (c). Pub. L. 105-368, § 213(a), amended the first sentence by inserting before the period at the end the following: ", without regard as to whether the complaint accrued before, on, or after October 13, 1994".
- 1996 - Subsec. (a)(1). Pub. L. 104-275, § 311(11)(A), struck out "of an unsuccessful effort to resolve a complaint relating to a Federal executive agency" after "notification pursuant to section 4322(e)".

Subsec. (b). Pub. L. 104-275, § 311(11)(B)(i), inserted "or the Office of Personnel Management" after "Federal executive agency" in introductory provisions.

Subsec. (b)(1). Pub. L. 104-275, § 311(11)(B)(ii), substituted "under section 4322(a)" for "regarding a complaint under section 4322(c)".

Subsec. (c)(2). Pub. L. 104-275, § 311(11)(C), inserted "or the Office of Personnel Management" after "Federal executive agency" and substituted "Office to comply" for "employee to comply".

#### EFFECTIVE DATE OF 1998 AMENDMENT

Section 213(b) of Pub. L. 105-368, provided that:

“The amendment made by subsection (a) shall apply to complaints filed with the Merit Systems Protection Board on or after October 13, 1994.”

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-275 effective Oct. 13, 1994, see section 313 of Pub. L. 104-275, set out as a note under section 4301 of this title.

#### EFFECTIVE DATE

Section effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, except that provisions necessary for implementation of section 4311 of this title are effective Oct. 13, 1994, see section 8 of Pub. L. 103-353, set out as a note under section 4301 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4322, 4332 of this title; title 3 section 416.