

U.S. MERIT SYSTEMS PROTECTION BOARD



*Annual
Report*



FISCAL YEAR
2007

MAY 2008



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Foreword

In accordance with section 1206 of Title 5, United States Code, the Merit Systems Protection Board (MSPB) provides this annual report on its significant actions during FY 2007. This report includes summaries of the most significant Board and court decisions issued during the year, case processing statistics, summaries of MSPB's merit systems studies, summaries of the significant actions of the Office of Personnel Management (OPM), and a summary of MSPB's financial results. In addition, where there have been significant activities since the end of the fiscal year, the report includes updated information as a service to the reader.

Additional information about FY 2007 program performance results and financial audit information is included in MSPB's separate Performance and Accountability Report (PAR). This Annual Report and the PAR as well as other information about the MSPB can be found on MSPB's Web site: *www.mspb.gov*.



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Fiscal Year 2007 in Review

Protecting merit: Evolving management policies and practices and changing demographics of the workforce

The most significant FY 2007 trends or issues affecting the MSPB's role to protect the Federal merit systems include changes and developments in management flexibilities, employee protections, appeals processing, and the changing demographics of the workforce. These factors will make the MSPB's ability to hire and retain skilled staff all the more critical.

Changes and developments in management flexibilities, employee protections and appeals processing

There continues to be an emphasis on more flexible human resources management policies and procedures. In FY 2007, there were further developments in the DHS and DoD personnel systems. After two years of litigation, DHS is moving forward with the implementation of the uncontested portions of its personnel system including a provision that would change the standards by which the MSPB may mitigate penalties imposed by DHS. In addition, DoD has announced that it does not intend to alter its appeals processes. Therefore, the MSPB will continue to process adverse action appeals from DoD employees based on existing laws and precedent. Other appeals by DHS and DoD employees (e.g., involving whistleblower rights, veterans' rights and administrative retirement decisions) will continue to be processed as they have been. In addition, changes in areas that are not themselves appealable, such as the performance management systems, will affect the adjudication of performance-based appeals. The management flexibilities that are underway in DHS and DoD, and those that are implemented in other agencies may lead to increases in the complexity of the MSPB's adjudication work.

The increasing number of employees who are managed under non-traditional human resources management systems will also affect the MSPB's statutory mission to conduct studies of the merit systems. The flexibilities granted to DHS and DoD and to other agencies in recent years, provide that the Title 5 provisions governing merit system principles and prohibited personnel practices may not be waived, modified or otherwise affected. Therefore, there will be an even greater need for the MSPB to conduct studies of these new management systems to ensure that they

are operating in accordance with merit system principles and free from prohibited personnel practices. Studying these new systems may also identify ways to improve the effectiveness and efficiency of Government operations.

In addition to changes in management flexibilities, legislation was introduced in FY 2007, which, if enacted, would potentially increase the number of cases brought to the MSPB. For example, the House of Representatives passed H.R. 985, the Whistleblower Protection Enhancement Act of 2007, which would expand the scope of whistleblower protections and increase the number of covered employees. The Senate whistleblower bill, S. 274, which is similar in scope, was recently reported out of the Senate Committee on Homeland Security and Governmental Affairs.

Finally, a court decision was issued in FY 2007 which impacts the way the MSPB processes certain appeals. In *Kirkendall v. Department of the Army*, the U.S. Court of Appeals for the Federal Circuit held that an appellant who brings a Uniformed Services Employment and Reemployment Rights Act (USERRA) claim before the MSPB has an unconditional right to a hearing even when the Administrative Judge who is adjudicating the appeal has determined that there is no need for a hearing. This decision will increase the number of hearings in appeals brought under the USERRA, leading to an increase in the overall number of hearings.

Changing demographics of the Federal workforce

The increasing proportion of retirement-eligible Federal employees and the need to hire employees to replace them, has a significant potential impact on agency workload. The average age of the current Federal workforce is the highest it has ever been. As these older employees retire we are likely to see an increase in the number of retirement-related appeals. In addition, older, more experienced employees are not as likely to be subjected to as many appealable actions as are younger, less experienced employees. As the proportion of younger employees increases through shifts in the workforce, we may experience an increase in the number of appealable actions. These changes will result in an overall increase in our adjudicatory workload.

Each of the four generations of employees that now make up the workforce may have different expectations for work, their employers and their colleagues. Each generation may be motivated by different factors, and may have different expectations for balancing work and family life. These differences increase the potential for conflict in the workplace and add to the complexity of the supervisor's role in managing all employees to achieve results. Overseeing how these workforce shifts impact the workplace may add to the complexity of our merit systems studies work.

The MSPB performs its role as chief protector of the Federal merit systems in accordance with the determinations made by the Congress and the President. The MSPB's experience in independently adjudicating appeals and conducting merit systems studies will continue to provide effective and efficient protection for the Federal merit systems and the rights of individuals within those systems. In this way, the MSPB will continue to assure the public of the Government's commitment to merit-based management.

MSPB leadership

Several senior office directors retired or were selected for new positions in FY 2007. The MSPB is taking a deliberate, strategic approach to filling these positions. William Spencer was selected as Clerk of the Board early in FY 2008 to replace the previous Director who retired from Federal service. Plans are underway to select a new Director for the Office of Policy and Evaluation to replace the previous Director who also retired. Plans are also underway to select a new Director for the Office of Appeals Counsel to replace the previous Director who was appointed as the Chief Counsel to the Vice Chairman.

Adjudication

The MSPB decided appeals and petitions for review (PFRs) in accordance with the laws and regulations governing such appeals. The MSPB issued 8,105 decisions in FY 2007. The regional, field offices and MSPB headquarters issued timely, high quality initial decisions and MSPB headquarters offices issued timely, high quality decisions in response to PFRs. The MSPB provided a full menu of successful alternative dispute resolution options to its customers, including settlement programs in the regional and field offices, the Mediation Appeals Program, and the availability of administrative judges (AJs) separately designated for settlement of a case. The case processing statistics presented in this report give detailed information regarding the type, origin and disposition of cases processed by the MSPB.

This report also contains brief summaries of the most significant Board decisions as well as Court opinions published in FY 2007. Significant Board decisions addressed such issues as the Whistleblower Protection Act, veterans rights under statutes including the Veterans Employment Opportunities Act of 1994 (VEOA) and the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), adverse actions, discrimination and restoration, and MSPB procedures. Significant decisions issued by the U.S. Court of Appeals for the Federal Circuit addressed the same issues and also the right to a disability retirement annuity.

Merit systems studies

The MSPB completed several studies and issued reports on such issues as the results of the 2005 Merit Principles Survey (MPS) and Federal career-entry new hires. The MSPB issued four editions of the *Issues of Merit* newsletter, which included articles on attracting entry-level and upper-level new hires, balancing training strategies, coaching employees, using better assessment instruments, establishing intern programs and using veterans' skills. In addition, the MSPB began administration of two large Governmentwide surveys, the 2007 MPS and the career advancement survey.

Legislative and congressional relations update

As required by statute, Chairman McPhie submitted a request for reauthorization along with draft legislation to the House Committee on Oversight and Government Reform and to the Senate Committee on Homeland Security and Governmental Affairs as the MSPB's current authorization was set to expire on September 30, 2007. Representative Danny K. Davis, Chairman of the House Subcommittee on Federal Workforce, Postal Service, and the District of Columbia, introduced the reauthorization bill (H.R. 3551) for both the MSPB and the Office of Special Counsel on September 17, 2007. Senator Daniel Akaka, Chairman of the Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, introduced a companion bill (S. 2057) on the same day. The House Subcommittee held a mark up of H.R. 3551 on September 18, 2007, and the bill was ordered to be reported favorably to the full Committee on Oversight and Government Reform. The House and the Senate will resume consideration of H.R. 3551 and S. 2057, respectively, during the Second Session of the 110th Congress.

The FY 2007 appropriation for the MSPB was enacted on February 15, 2007. It provided a total funding level of \$38,666,176, which included \$2,602,858 in reimbursements from the Civil Service Retirement and Disability Fund. The amount was approximately \$444,000 less than requested by the President. Later in the fiscal year, the House and the Senate Appropriations subcommittees approved the MSPB's request to use 50% of its unobligated balance that remained available at the end of fiscal year 2006.

The MSPB's Congressional relations activities during FY 2007 included providing testimony during Congressional hearings and statements for the hearing record where the Chairman was not required to testify in person, conducting briefings for Congressional committee staff, and meeting with members of Congress.

On February 13, 2007, Chairman McPhie submitted testimony for the record for the House Committee on Oversight and Government Reform hearing on H.R. 985 entitled: *H.R. 985, The Whistleblower Protection Enhancement Act of 2007*.

On March 6, 2007, Chairman McPhie testified before the House Appropriations Subcommittee on Financial Services and General Government at a hearing entitled: *Issues Regarding the Federal Workforce*. On March 22, 2007, Chairman McPhie testified before the Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia at a hearing entitled: *Safeguarding the Merit System Principles: A Review of the Merit Systems Protection Board and the Office of Special Counsel*. On July 12, 2007, Chairman McPhie testified before the House Subcommittee on Federal Workforce, Postal Service and the District of Columbia at a hearing entitled: *Ensuring a Merit-Based Employment System: An Examination of the Merit Systems Protection Board and the Office of Special Counsel*. Finally, on September 6, 2007, Chairman McPhie testified before the House Committee on Veterans' Affairs Subcommittee on Economic Opportunity at a hearing entitled: *Veterans' Preference*.

During FY 2007, the MSPB staff conducted Congressional committee staff briefings on the MSPB's reauthorization request, its FY 2008 budget request, the agency's operations and accomplishments, and the MSPB's procedures for adjudicating and processing Hatch Act cases. In addition, Chairman McPhie met with the Chairs of the MSPB's House and Senate oversight subcommittees, and the Chair of the MSPB's House appropriations subcommittee, as well as other Congressional members of the District of Columbia, Maryland and Virginia local delegations. Further, as part of his efforts to increase outreach to members of Congress and to be of further assistance to them in their representational and constituent services duties, the Chairman sent letters of introduction to new Congressional members who represent districts and states where MSPB regional and field offices are located, and to Congressional members of the DC, Maryland and Virginia local delegations. The MSPB expects to continue this work during FY 2008.

Significant actions of the Office of Personnel Management

The MSPB is responsible for providing an independent, nonpartisan review of the actions of OPM to ensure that these actions conform with merit principles and do not result in prohibited personnel practices. The MSPB reviewed the significant policy and leadership actions of OPM including clarification of adverse action rules and the announcement of a new administrative law judge (ALJ) examination. The MSPB reviewed OPM's significant compliance and accountability actions including electronic Official Personnel Folders (eOPF) and Senior Executive Service (SES) pay for performance system certification. The MSPB also reviewed OPM's significant actions related to delivering products and services including providing automated recruitment guidance, improvements to the Labor Agreement Information Retrieval Systems (LAIRS), electronic delivery of security clearance investigations, and implementation of the new Federal employee dental and vision insurance programs.



Board Members and Board Organization

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, and confirmed by the Senate, and serve overlapping, non-renewable 7-year terms.

Chairman

NEIL A. G. McPHIE was confirmed as Chairman of the U.S. Merit Systems Protection Board on November 21, 2004. Chairman. McPhie had served as Acting Chairman since December 10, 2003, when President Bush designated him to be Vice Chairman. He was sworn in as a member of the Board on April 23, 2003, following his recess appointment by President Bush. Chairman McPhie's term will expire on March 1, 2009. Prior to joining the Board, he was Senior Assistant Attorney General in the Office of the Attorney General of Virginia. Among other responsibilities, he defended employment discrimination claims brought under Federal law and wrongful discharge claims brought under state law. Previously, he was Executive Director of the Virginia Department of Employment Dispute Resolution (EDR). In that position, he directed implementation of EDR's statewide grievance, mediation, training and consultation programs. He was an Assistant Attorney General in the Office of the Attorney General of Virginia from 1982 to 1988. From 1976 until he joined the Attorney General's Office, he was a Trial and Appellate Attorney in the Office of the General Counsel at the U.S. Equal Employment Opportunity Commission. He received his J.D. degree from Georgetown University Law Center in 1976. He received a B.A. in Economics from Howard University in 1973, graduating magna cum laude. He is a member of Phi Beta Kappa. He is admitted to the bars of the District of Columbia, Virginia, New York and Iowa, the United States Supreme Court, the United States District Court for the District of Columbia, several of the United States circuit courts of appeals, and district courts in Virginia.



Vice Chairman

MARY M. ROSE was designated by President Bush as Vice Chairman of the U.S. Merit Systems Protection Board on January 27, 2006. Mrs. Rose was sworn in as a Board Member on December 28, 2005, following her confirmation by the Senate on December 17, 2005. Vice Chairman Rose's appointment will expire on March 1, 2011. Prior to joining the Board, Mrs. Rose was appointed by the President to serve as Vice Chairman of the Federal Salary Council. She was Chairman of the Federal Prevailing Rate Advisory Committee where she advised the Director of the U.S. Office of Personnel Management on Federal pay, benefits, and other policy issues. Previously, Mrs. Rose served as Deputy Associate Director of the Office of Presidential Personnel at the White House. She served four years as the Elected Clerk of the Circuit Court, Anne Arundel, Maryland. Mrs. Rose has also served as Assistant Director for Executive Administration, Office of Personnel Management; Director of Personnel, White House Personnel Office; and Deputy Undersecretary for Management at the Department of Education. Her private sector experience includes positions as a consultant with an Annapolis law firm and as a Visiting Fellow with The Heritage Foundation where she recruited, interviewed, and recommended Presidential appointments to the George W. Bush transition team. Mary M. Rose received an R.N. degree from the Bon Secours Hospital School of Nursing, and she completed the Maryland Registered Nurse Recertification Program in May 2000. Mrs. Rose is married to Philip D. Rose, M.D., and has four children.



Member

BARBARA J. SAPIN was confirmed as a Member of the Merit Systems Protection Board on November 21, 2004. Ms. Sapin's term expired on March 1, 2007. She continued to serve as a Board Member until February 29, 2008 pursuant to 5 U.S.C. 1202(c) of MSPB's enabling statute, which permits a member whose term has expired to continue to serve until a successor has been appointed but no longer than one year after the term has expired. Previously, Ms. Sapin served as Vice Chairman during a recess appointment (January 2001 – December 2001). Ms. Sapin served in a number of labor and employment law related positions, including General Counsel and Labor Counsel to the American Nurses Association from 1990 until the time of her initial appointment to the Board. In addition, Ms. Sapin held several positions at the National Labor Relations Board from 1981 to 1990, including attorney for the Appellate Court Branch in Washington, D.C., field attorney in the Chicago Regional Office, and Senior Counsel to a Board Member. Prior to 1981, Ms. Sapin's Government service included positions with the Occupational Safety and Health Review Commission and the U.S. Environmental Protection Agency. Ms. Sapin received her B.A. in Psychology from Boston University and a Juris Doctorate from the Columbus School of Law, Catholic University of America. She is admitted to the District of Columbia and Maryland Bars.



Board offices and structure

The MSPB is organized according to its statutory missions to adjudicate appeals and conduct merit systems studies, and it has offices that support these missions. In addition to its three appointed Board members, the MSPB has approximately 225 employees assigned to headquarters and to its eight regional and field offices located throughout the United States.

The **Board Members** adjudicate cases brought to the MSPB. The **Chairman**, by statute, is the chief executive and administrative officer. Office heads report to the Chairman through the Chief of Staff.

The **Office of the Administrative Law Judge (ALJ)** adjudicates and issues initial or recommended decisions on petitions for corrective action and disciplinary action complaints (including Hatch Act complaints) brought by the Special Counsel, proposed agency actions against administrative law judges, MSPB employee appeals, and other cases assigned by the Board. (The functions of this office are currently performed by administrative law judges at the National Labor Relations Board with staff support from the MSPB headquarters legal offices under an interagency agreement.)

The **Office of Appeals Counsel (OAC)** conducts legal research and proposes decisions for the Board in cases where parties petition for review of administrative judges' initial decisions and in most other cases decided by the Board. The office conducts the MSPB's petition for review settlement program, prepares proposed decisions on 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 (OCB)** receives and processes cases filed at the MSPB headquarters, rules on certain procedural matters, and issues the Board's decisions and orders. The office serves as the MSPB's public information center, coordinates media relations, publishes public information, operates the MSPB's library and on-line information services, and administers the Freedom of Information Act and Privacy Act programs. The office also certifies official records to the courts and Federal administrative agencies, and manages MSPB's records and directives systems, legal research programs, and the Government in the Sunshine Act program.

The **Office of Equal Employment Opportunity (EEO)** plans, implements, and evaluates the MSPB's equal employment opportunity programs. It processes complaints of alleged discrimination and furnishes advice and assistance on affirmative employment initiatives to MSPB managers and supervisors.

The **Office of Financial and Administrative Management (FAM)** administers the budget, accounting, travel, time and attendance, human resources, procurement, property management, physical security and general services functions of the MSPB. It develops and coordinates internal management programs and projects, including review of internal controls agency-wide. It also administers the agency's cross-servicing agreements with the U.S. Department of Agriculture (USDA) National Finance Center for payroll services, the Department of the Treasury Bureau of the Public Debt for accounting services, and USDA's Animal and Plant Health Inspection Service for human resources management services.

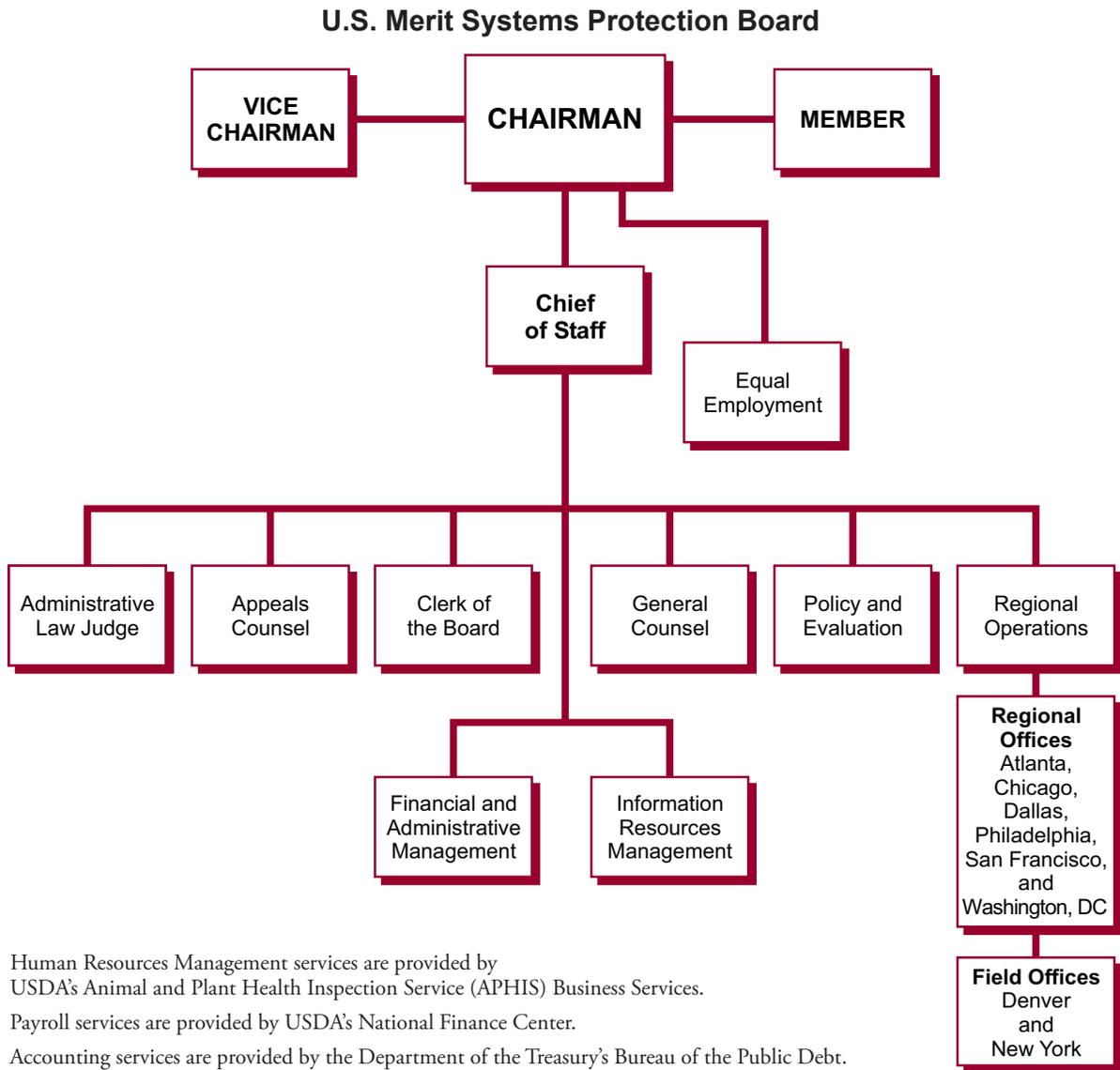
The **Office of the General Counsel (OGC)**, as legal counsel to the Board, advises the Board and MSPB offices on a wide range of legal matters arising in day-to-day operations. The office represents the MSPB in litigation, prepares proposed decisions for the Board on compliance recommendations issued by the administrative judge, requests to review OPM regulations and other assigned cases, and coordinates MSPB's legislative policy and congressional relations functions. The office also drafts regulations, conducts the MSPB's ethics program, and plans and directs audits and investigations.

The **Office of Information Resources Management (IRM)** develops, implements, and maintains MSPB's automated information systems to help the MSPB manage its caseload efficiently and carry out its administrative and research responsibilities.

The **Office of Policy and Evaluation (OPE)** carries out the MSPB's statutory responsibility to conduct studies of the civil service and other Federal merit systems. Reports of these studies are directed to the President and Congress and distributed to a national audience. The office provides information and advice to Federal agencies on issues that have been the subject of MSPB studies. The office also conducts special projects for the Board and has responsibility for preparing the MSPB's plans and reports required by the Government Performance and Results Act (GPRA).

The **Office of Regional Operations (ORO)** oversees the MSPB's six regional and two field offices, which receive and process appeals and related cases, and manages the MSPB's mediation appeals program (MAP). Administrative judges (AJs) in the regional and field offices are responsible for adjudicating assigned cases and for issuing fair and well-reasoned initial decisions.

Organization chart



Human Resources Management services are provided by USDA's Animal and Plant Health Inspection Service (APHIS) Business Services.

Payroll services are provided by USDA's National Finance Center.

Accounting services are provided by the Department of the Treasury's Bureau of the Public Debt.



Significant Board Decisions and Court Opinions Issued in FY 2007

The MSPB issued a substantial number of noteworthy decisions in fiscal year 2007, a number of which are summarized below. The report also includes brief summaries of a number of significant opinions issued by the United States Court of Appeals for the Federal Circuit as a service to our stakeholders.

Significant Board decisions

Whistleblower Protection Act

In *Greenup v. Department of Agriculture*, 106 M.S.P.R. 202 (June 28, 2007), the Board addressed, for the first time, the question of whether a disclosure made by an individual who is neither an applicant for employment nor an employee can later be found to have been protected whistleblowing. The Board held that 5 U.S.C. § 2302(b)(8), which proscribes retaliation for “any disclosure of information by an employee or applicant” that is reasonably believed to evidence certain wrongdoing, does not specify that the disclosure must have been made when the individual seeking protection was either an employee or applicant for employment. Thus, the fact that the appellant in *Greenup* was not an “employee” under 5 U.S.C. § 2105, by virtue of her position with a county committee of the USDA when she made her disclosures, did not prevent the Board from taking jurisdiction over her claim that the agency subsequently did not select her for employment based on those disclosures when she became an applicant for employment. The Board held that, “[i]n the case of applicants for employment who were not Federal employees at any time prior to their application, such a limitation would severely restrict any recourse they might otherwise have, since the disclosure would necessarily have to be made while their application was pending.” The Board held that Congress could not have intended to grant such a limited right of review when it decided to protect applicants for employment.

VEOA, USERRA, Veterans Rights

In *Brandt v. Department of the Air Force*, 103 M.S.P.R. 671 (October 20, 2006), the Board addressed the question of what it means, under 5 U.S.C. § 3304(f)(1), for preference eligibles or certain veterans not to be denied the opportunity “to compete” for vacant positions for which the agency making the announcement will accept applications from individuals outside its own workforce “under merit promotion procedures.” The appellant, a 10-point preference eligible, applied

for a vacant firefighter position in the competitive service. The agency's vacancy announcement indicated that applications would be accepted from external candidates and would be considered under "noncompetitive" appointing authorities, such as the Veterans Employment Opportunities Act of 1998 (VEOA) and the authority to transfer employees from other Federal agencies. The appellant's name was listed on three certificates issued under various appointing authorities, including the certificate issued under VEOA. The agency did not, however, assign numerical ratings to the candidates it referred to the selecting official, and did not restrict consideration to a few top-ranked candidates on any list; instead, it listed all candidates who had been found to be among the "best qualified" in alphabetical order on each of the certificates, permitting the selecting official to select any listed candidate. The appellant was not selected for the two vacancies that were filled. The Board noted that, although the effect of subsection (f)(1) on entitlement to veterans' preference was unclear, the Office of Personnel Management (OPM) promulgated reasonable regulations interpreting the phrase "under merit promotion procedures" as modifying the verb "to compete," such that covered veterans may compete for vacancies under merit promotion when an agency accepts applications from individuals outside its own workforce. The Board held that such competition under merit promotion procedures differed considerably from the requirements applicable to open competitive examinations, and provided for selection of any of a group of "best qualified" candidates. The Board also found that 5 U.S.C. § 3304(f)(1)-(2), under which the selectees in this case were eligible for appointment, was a valid exception to the general requirement, under 5 U.S.C. § 3304(b), that individuals appointed in the competitive service either have passed an examination or have been specifically excepted from doing so. Thus, the Board denied the appellant's request for corrective action.

Similarly, in *Joseph v. Federal Trade Commission*, 103 M.S.P.R. 684 (October 24, 2006), the Board held that a competitive examination is not required when an agency selects an internal candidate, i.e., someone who is already on its employment rolls, under "merit promotion" procedures, and that veterans' preference rules do not apply to a merit promotion action. The Board held that OPM reasonably interpreted 5 U.S.C. § 3304(f)(1) as merely conferring on preference eligibles and certain other veterans the right to be considered alongside internal candidates under merit promotion procedures. The Board noted that OPM did not interpret section 3304(f)(1) as requiring an agency to conduct a competitive examination with veterans' preference, and deferred to OPM's interpretation in that regard. Further, the Board found nothing in 5 U.S.C. § 3304(f), the purpose of which was to prohibit agencies from limiting applications for vacancies to internal candidates and those with competitive status, that disallows simultaneous external and internal competitions for a single position. The Board concluded that the appellant's veterans' preference rights were not violated when he received veterans' preference in the competitive examination the agency used to assess external candidates, but did not receive such preference in the concurrent assessment under merit promotion procedures.

In *Belhumeur v. Department of Transportation*, 104 M.S.P.R. 408 (January 11, 2007), appeal dismissed, 224 F. App'x 967 (Fed. Cir. 2007), the Board addressed for the first time the question of whether the Federal Aviation Administration (FAA) is excluded by statute from 5 U.S.C. § 3330a, which grants the Board jurisdiction over a claim that a non-selection for a position violated a statute or regulation relating to veterans preference under VEOA. The Board held that, because Congress granted the FAA the authority to establish a personnel system not subject to the provisions of Title 5, with certain enumerated exceptions that do not include 5 U.S.C. § 3330a, the Board does not have jurisdiction over a case filed under VEOA by an FAA employee or applicant.

The Board addressed, in *Jolley v. Department of Homeland Security*, 105 M.S.P.R. 104 (February 21, 2007), the issue of whether a preference eligible who was a current Federal employee, and whose duty station was not physically located within the area of consideration set forth in a vacancy announcement, could be denied consideration for the position when the area of consideration was limited to employees of the Federal Law Enforcement Training Center (FLETC) and on-site partner organizations. Rejecting as dispositive both a nonprecedential Federal Circuit decision, *O'Brien v. Office of Personnel Management*, 118 F. App'x 484 (Fed. Cir. 2004), and a provision in OPM's VetsGuide suggesting that 5 U.S.C. § 3304(f)(1) only covers individuals seeking initial Federal appointment, the Board held that "the version of section 3304(f)(1) that became law is not limited to ensuring competition by those covered individuals who have not acquired competitive status or who are not currently employed by the hiring agency. Instead, the plain language of the enacted version provides that any covered individual – i.e., any preference eligible or individual whose military service and conditions of discharge bring him within the scope of section 3304(f)(1) – may compete for a vacancy whenever the hiring agency will accept applications from outside its own workforce." The Board concluded that, because the agency indicated in its vacancy announcement that it would accept applications from individuals not employed by the Department of Homeland Security, 5 U.S.C. § 3304(f)(1) prohibited it from declining to consider the appellant on the ground that he was not currently employed at FLETC. The Board ordered the agency to determine whether the appellant was qualified for the supervisory law enforcement specialist position for which he applied, and if he was qualified, to reconstruct the selection process for that position.

In *Styslinger v. Department of the Army*, 105 M.S.P.R. 223 (February 22, 2007), the appellant, who retired as a Major in the U.S. Army and was employed by the Department of Energy, applied for a position with the Department of the Army that was open to veterans eligible under VEOA. The agency did not consider him for the position, however, because he was a current Federal employee and the agency believed that VEOA eligibility applied only to veterans who have no other "status" to apply on a merit promotion announcement. The Board noted, first, that the vacancy announcement may have been incomplete, because VEOA covers veterans and

preference eligibles, and not all of the latter are themselves veterans. It then found that, unlike a complaint filed under 5 U.S.C. § 3330a(a)(1)(A), which requires an appellant to allege that he is a preference eligible and that an agency has violated his rights under any statute or regulation relating to veterans' preference, in order to state a viable claim on a complaint filed pursuant to 5 U.S.C. § 3330a(a)(1)(B), an appellant need only allege he is a veteran described in 5 U.S.C. § 3304(f)(1) and that the agency violated his rights under that section. The Board then held that it has jurisdiction to adjudicate an appeal filed by a non-preference eligible veteran who alleges that an agency violated his rights under 5 U.S.C. § 3304(f)(1), which provides that preference eligibles or certain other veterans may not be denied the opportunity to compete for vacant positions for which the agency making the announcement will accept applications from individuals outside its own workforce under merit promotion procedures. The Board further found that, even though the appellant maintained some connection to the U.S. Army as a regular officer on its retired list, he still qualified as a "veteran described in section 3304(f)(1)" because he was a veteran who had been separated from the armed forces under honorable conditions after 3 years or more of active service. The Board also set forth, for the first time, the jurisdictional test for a VEOA appeal filed under 5 U.S.C. § 3330a(a)(1)(B); specifically, the appellant must establish that he exhausted his Department of Labor remedy and make nonfrivolous allegations that he is a veteran described in section 3304(f)(1), that the agency denied him the opportunity to compete under merit promotion procedures for a vacant position for which the agency accepted applications from individuals outside its own workforce, and that the denial occurred on or after the December 10, 2004 enactment date of the Veterans' Benefits Improvement Act of 2004.

In *Davis v. Department of Defense*, 105 M.S.P.R. 604 (May 7, 2007), the Board set forth its first interpretation of the U.S. Court of Appeals for the Federal Circuit's en banc decision in *Kirkendall v. Department of the Army*, 479 F.3d 830 (Fed. Cir. 2007), which held that an individual who brings a USERRA appeal has an unconditional right to a hearing on the merits. The Board noted that the court did not address the question of whether that unconditional right to a hearing extended to appeals brought under VEOA. The Board reasoned that its regulations provide for the possible disposition of a VEOA claim on the merits without a hearing, and that VEOA does not contain any language relating to a "hearing" comparable to the language in USERRA that the *Kirkendall* plurality relied upon. Thus, the Board held that it continues to have the authority to decide a VEOA claim on the merits, without a hearing, when there is no genuine dispute of material fact and one party must prevail as a matter of law.

The Board addressed the hiring authority set forth in the Federal Career Intern Program (FCIP) in *Gingery v. Department of Defense*, 105 M.S.P.R. 671 (May 30, 2007), finding that the FCIP is a valid exception to the competitive examination requirement set forth at 5 U.S.C. § 3304(b), because it was expressly authorized by an Executive Order promulgated under 5 U.S.C. § 3302. In reaching this

conclusion, the Board rejected the appellant's argument that cases such as *Dean v. Department of Agriculture*, 99 M.S.P.R. 533 (2005), *aff'd on recons.*, 104 M.S.P.R. 1 (2006), and *Olson v. Department of Veterans Affairs*, 100 M.S.P.R. 322 (2005), *aff'd on recons. sub nom. Dean v. Department of Agriculture*, 104 M.S.P.R. 1 (2006), which found that the Outstanding Scholar Program (OSP) did not create an exception that superseded veterans' preference rights under the competitive process, established that hiring under the FCIP constituted an improper circumvention of such rights. Thus, the Board denied the appellant's request for relief under VEOA in this nonselection case.

In *Isabella v. Department of State*, 106 M.S.P.R. 333 (August 10, 2007), the Board found, based on the record in the case, that the agency's maximum entry age requirement of 37 years was not essential to the performance of the duties of the position of Diplomatic Security Service Special Agent, and that the agency's failure to waive that requirement violated the appellant's rights under statutes related to veterans preference, specifically, 5 U.S.C. §§ 3312(a)(1) and 3320. As a remedy for this VEOA violation, the Board ordered the agency to waive the maximum entry age and to reconstruct the selection process under which the appellant was not hired, including affording the appellant any other advantage to which his status as a preference eligible might entitle him.

Adverse Actions/Discrimination/Restoration

In *McAlexander v. Department of Defense*, 105 M.S.P.R. 384 (April 6, 2007), the Board held that a Police Officer's acceptance of a lower-paying Office Support Assistant position, in lieu of a proposed removal for failure to meet new, more stringent hearing requirements for Police Officers, could not be considered a legally involuntary result of disability discrimination. The Board noted that, under 42 U.S.C. § 12113(a), an employer may lawfully exclude an individual from a job on the basis of a qualification standard that tends to screen out individuals with disabilities as long as the standard is job-related and consistent with business necessity. The Board found that the agency's auditory qualification standard was manifestly job-related and consistent with business necessity, and that although the appellant claimed that he could not be removed unless the agency first conducted an "individualized assessment" of whether he would pose a "direct threat" to the safety of himself or others if he remained in the position, the agency's occupational audiologist performed such an assessment in this case, and the agency established that the appellant would pose a direct threat to the safety of himself or others if he remained in the Police Officer position.

The Board in *Brehmer v. U.S. Postal Service*, 106 M.S.P.R. 463 (August 31, 2007), noted that under its existing case law, a partially-recovered employee may normally appeal only for a determination as to whether the agency acted arbitrarily and capriciously in denying restoration. The appellant, who had been restored by the agency, claimed that the restoration was terminated when the agency ended his

limited-duty assignment and stated that it had no light-duty work available. The Board held, under these circumstances, that a claim that restoration rights previously granted were rescinded may constitute an appealable denial of restoration within the meaning of 5 C.F.R. § 353.304(c).

Board Procedures

In a case clarifying its mootness doctrine, *Fernandez v. Department of Justice*, 105 M.S.P.R. 443 (April 6, 2007), the Board held that for an appeal to be deemed moot, the employee must have received all of the relief that he could have received “if the matter had been adjudicated and he had prevailed,” citing five Board decisions in support of this holding. The Board noted that six other Board decisions had held that an appeal was moot if, after cancellation of the appealed action, the employee was placed in the position he would have been in if the action had never occurred. The Board overruled those six decisions, finding that the correct focus in deciding whether an appeal is moot is on whether there is any relief the appellant could receive if the Board ruled in his favor.

The Board addressed the doctrine of equitable estoppel in *Blaha v. Office of Personnel Management*, 106 M.S.P.R. 265 (July 16, 2007), a case in which the parties stipulated that, at the time of the appellant’s retirement, she asked an employee in her employing agency’s retirement section if she could get a survivor annuity for her domestic partner of 15 years, and was told that no such benefit was available. In fact, under 5 U.S.C. § 8339(k)(1), an employee who is found to be in good health by OPM may elect a reduced annuity and name in writing an individual having an insurable interest in the employee to receive an annuity after the death of the retired employee. OPM denied the appellant’s request to elect a survivor annuity as untimely filed, and the Board’s administrative judge affirmed OPM’s determination, but the Board vacated the initial decision and remanded the appeal. The Board noted that an agency’s affirmative misconduct may preclude the enforcement of a statutory or regulatory deadline under the doctrine of equitable estoppel, at least where such estoppel would not result in the expenditure of appropriated funds in contravention of a statute. The Board held that the principle set forth in *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990), that the government cannot be estopped from denying benefits not otherwise permitted by law, even if the claimant was denied monetary benefits due to reliance on the mistaken advice of a government official, does not apply in situations when a claim of equitable estoppel is raised and there is no claim for payment of money from the U.S. Treasury, as in this case. Thus, the Board remanded this case to allow the appellant to develop her misinformation claim, including proving that she reasonably relied on the misinformation provided by her employing agency’s retirement counselor.

In *Bennett v. Department of Transportation*, 105 M.S.P.R. 634 (May 9, 2007), the Board held that in addition to lacking the authority to award back pay to an

employee of the Federal Aviation Administration, as set forth in *Ivery v. Department of Transportation*, 102 M.S.P.R. 356 (2006), the Board also lacks the authority to award such an employee specific or equitable relief because there has been no express waiver of sovereign immunity in that regard. This case involved the reversal of the appellant's placement on enforced leave, and the remedy at issue was restoration of leave that had been improperly charged to the appellant.

In *Ortiz v. Department of Justice*, 103 M.S.P.R. 621 (Oct. 6, 2006), the Board declined to create a rigid, mechanical test for determining whether to grant anonymity in a proceeding before the Board, but for the first time did set forth general principles that should apply to such determinations. The Board agreed with several courts of appeals that a party seeking anonymity must overcome the presumption that parties' identities are public information, that anonymity should be granted only in unusual circumstances, and that the determination of whether to grant anonymity must depend on the particular facts of each case. A litigant seeking anonymity must present evidence that harm is likely, not merely possible, if his or her name is disclosed, and that the likelihood and extent of the harm to the appellant significantly outweighs the public interest in disclosure of the appellant's identity. The Board denied the appellant's request for anonymity in this case, finding that his speculative claim that publication of his medical condition might harm his employment prospects was not enough to justify shielding his identity. The Board also noted that the appellant did not request anonymity until 2 months after filing his petition for review, the appellant himself raised the issue of his medical condition as a justification for the delay in filing his petition for review, a third-party's privacy interests were not at issue in the case, and there was no reason to believe that disclosing the details of the appellant's medical condition would cause extreme embarrassment or expose him to public ridicule.

Finally, the Board addressed the issue of the reasonableness of an attorney fee award in *Del Prete v. U.S. Postal Service*, 104 M.S.P.R. 429 (January 18, 2007), finding for the first time that when an appellant in an adverse action appeal does not prevail on a challenge to the merits of the charge, but wins only on the issue of mitigation of the penalty, and is otherwise found to be a prevailing party because the agency knew or should have known that its penalty would not stand in light of the mitigating factors, the attorney fee award will be limited to fees and expenses attributable to the penalty issue only, and the fees attributed to the appellant's unsuccessful challenge to the merits of the charge are not compensable. Relying on the Supreme Court's decisions in *Farrar v. Hobby*, 506 U.S. 103 (1992), and *Hensley v. Eckerhart*, 461 U.S. 424 (1983), the Board held that once an appellant meets the threshold requirement of being the prevailing party in a case, the degree of success obtained is "the most critical factor" in determining the reasonableness of an attorney fee award. Thus, the Board held that an award of attorney fees is not "all or nothing" in a case in which the appellant prevails only on the issue of an appropriate penalty.

Significant opinions issued by the United States Court of Appeals for the Federal Circuit

Gooden v. Office of Personnel Management, 471 F.3d 1275 (Fed. Cir. 2006). Applicants for disability benefits are not required to request accommodation in order to prove that accommodation was unreasonable.

Lary v. United States Postal Service, 472 F.3d 1363 (Fed. Cir. 2006), *clarified on denial of reh'g*, 493 F.3d 1355 (Fed. Cir. 2007). The agency's failure to provide documents that the appellant needed to timely file his disability retirement application constituted a material breach of the parties' settlement agreement, and specific performance was the only adequate remedy given that the appellant was irreparably harmed by the missed deadline.

Stoyanov v. Department of the Navy, 474 F.3d 1377 (Fed. Cir.), *cert. denied*, 128 S.Ct. 247 (2007). The Whistleblower Protection Act does not protect against retaliation by an agency against a whistleblower's family members; the allegedly improper personnel action must have been taken or have been proposed against the person bringing the IRA appeal.

Parrish v. Merit Systems Protection Board, 485 F.3d 1359 (Fed. Cir. 2007). When an agency asserts that it has ousted, pursuant to its demonstration project authority, the jurisdiction of the Board, the Board must fully and carefully analyze the agency's action to ensure that the agency has complied with the requirements Congress has imposed as a condition for limiting the Board's jurisdiction.

Kalil v. Department of Agriculture, 479 F.3d 821 (Fed. Cir. 2007). The character of a whistleblower disclosure may supply clear and convincing evidence that the agency would have taken the action absent the whistleblowing activities.

Cheney v. Department of Justice, 479 F.3d 1343 (Fed. Cir. 2007). When an indefinite suspension is imposed on an employee due to the suspension of his security clearance, the agency must provide the employee with the allegations that formed the basis for the suspension of the security clearance so that the employee can make a meaningful response to the proposed suspension.

Kirkendall v. Department of the Army, 479 F.3d 830 (Fed. Cir.) (en banc), *cert. denied sub nom., Department of the Army v. Kirkendall*, 128 S.Ct. 375 (2007). The filing deadlines contained in VEOA are subject to equitable tolling; veterans are entitled to a hearing on their claims brought under USERRA because USERRA claims are "appeals" within the meaning of 5 U.S.C. § 7701.

Toyama v. Merit Systems Protection Board, 481 F.3d 1361 (Fed. Cir. 2007). An agency provided incorrect appeal rights when it stated that the employee's options were to file with the Equal Employment Opportunity Commission or in district court, rather than that her options were to file before the Board or in district court; the failure to provide adequate notice constituted good cause for the employee's late Board appeal.

Perez v. Department of Justice, 480 F.3d 1309 (Fed. Cir. 2007). When an agency provides at least 30 days written notice, it need not have reasonable cause to believe an employee has committed a crime before suspending the employee indefinitely; 5 U.S.C. § 7513(b)(1) only requires a reasonable cause determination if the agency gives less than 30 days notice.

Tully v. Department of Justice, 481 F.3d 1367 (Fed. Cir. 2007). A "leave of absence," for purposes of USERRA, is not any leave of absence, but rather one comparable to the leave provided to the service member for military service.

Rapp v. Office of Personnel Management, 483 F.3d 1339 (Fed. Cir. 2007). An individual is entitled to a hearing before the Board on whether she is mentally competent to represent herself where she is challenging the denial of the continuation of her disability retirement annuity because of failure to prove continuing mental disability and she is seeking legal assistance.

Lutz v. United States Postal Service, 485 F.3d 1377 (Fed. Cir. 2007). The agency materially breached the parties' settlement agreement, which included an agency promise that it would cooperate and facilitate the acceptance of Mr. Lutz's disability retirement application and not place negative statements in the supervisor statement, when a supervisor's negative statements discouraged OPM's acceptance of the application.

Pittman v. Department of Justice, 486 F.3d 1276 (Fed. Cir. 2007). Pursuant to 5 U.S.C. § 7121(e), the Board was barred from adjudicating Mr. Pittman's USERRA claims because he had elected to raise similar matters by challenging his removal under the negotiated grievance procedure.

Rhodes v. Merit Systems Protection Board, 487 F.3d 1377 (Fed. Cir. 2007). For purposes of an election made under 5 U.S.C. § 7121(e), the matter raised by an appeal from an imposition of an indefinite suspension is not the same as the matter raised by an appeal from the continuation of an indefinite suspension. Therefore, the petitioner's election to grieve the former does not preclude an appeal to the Board of the latter.

Hernandez v. Department of the Air Force, 498 F.3d 1328 (Fed. Cir. 2007). Where a governmental action violated a veterans' protection statute in effect at the time the conduct occurred, the Board has jurisdiction under USERRA to adjudicate claims arising from that past violation, regardless of whether it occurred before, on, or after the enactment of USERRA.

Pucilowski v. Department of Justice, 498 F.3d 1341 (Fed. Cir. 2007). The Board has authority under USERRA to order correction of civilian and military leave records to remedy improper charges of military leave; however, claimants are entitled to monetary compensation or its equivalent only where they demonstrate actual harm.

Jacobsen v. Department of Justice, 500 F.3d 1376 (Fed. Cir. 2007). USERRA does not impose a "prevailing party" requirement in order to be entitled to attorney fees; however the Board may consider a litigant's nominal degree of success in relation to the relief he sought as a factor in denying fees.



FY 2007 Case Processing Statistics

Summary of cases decided by MSPB

Table 1: FY 2007 Summary of Cases Decided by MSPB

Cases Decided in MSPB Regional/Field Offices RO/FOs:	
Appeals	6,305
Addendum Cases ¹	518
Stay Requests ²	60
TOTAL Cases Decided in RO/FOs	6,883
Cases Decided by Administrative Law Judges (ALJs) – Original Jurisdiction ³	13
Cases Decided by the Board:	
Appellate Jurisdiction:	
Petitions for Review (PFRs) – Appeals	1,023
Petitions for Review (PFRs) – Addendum Cases	133
Reviews of Stay Request Rulings	0
Requests for Stay of Board Order	4
Reopenings ⁴	4
Court Remands	3
Compliance Referrals	22
EEOC Non-concurrence Cases	1
Arbitration Cases	6
Subtotal – Appellate Jurisdiction	1,196
Original Jurisdiction ⁵	12
Interlocutory Appeals	1
TOTAL Cases Decided by the Board	1,209
TOTAL Decisions (Board, ALJs, RO/FOs)	8,105

¹ Includes 100 requests for attorney fees, 5 requests for compensatory damages (discrimination cases only), 2 requests for consequential damages, 2 requests for liquidated damages, 255 petitions for enforcement, 126 Board remand cases, and 28 court remand cases.

² Includes 36 stay requests in whistleblower cases and 24 in non-whistleblower cases.

³ Initial Decisions issued by ALJ. Case type breakdown: 1 OSC corrective action, 7 Hatch Act cases; 1 action against a member of the SES; and 4 actions against ALJs.

⁴ 3 cases were reopened by the Board on its own motion and 1 by request of OPM.

⁵ Final Board decisions. Case type breakdown: 6 requests for regulation review, 3 OSC stay requests, and 3 Hatch Act cases.

Regional case processing

**Table 2: Disposition of Appeals Decided
in the Regional and Field Offices, by Type of Case**

Type of Case	Decided		Dismissed ¹		Not Dismissed ¹		Settled ²		Adjudicated ²	
	#	#	%	#	%	#	%	#	%	
Adverse Action by Agency	2746	1237	45.05	1509	54.95	978	64.81	531	35.19	
Termination of Probationers	356	323	90.73	33	9.27	27	81.82	6	18.18	
Reduction in Force	88	63	71.59	25	28.41	9	36.00	16	64.00	
Performance	142	32	22.54	110	77.46	69	62.73	41	37.27	
Acceptable Level of Competence (WIGI)	26	17	65.38	9	34.62	3	33.33	6	66.67	
Suitability	75	26	34.67	49	65.33	25	51.02	24	48.98	
CSRS Retirement: Legal	455	183	40.22	272	59.78	5	1.84	267	98.16	
CSRS Retirement: Disability	83	47	56.63	36	43.37	0	0.00	36	100.00	
CSRS Retirement: Overpayment	120	41	34.17	79	65.83	48	60.76	31	39.24	
FERS Retirement	515	229	44.47	286	55.53	68	23.78	218	76.22	
FERCCA	20	12	60.00	8	40.00	0	0.00	8	100.00	
Individual Right of Action	199	128	64.32	71	35.68	41	57.75	30	42.25	
Other	1480	930	62.84	550	37.16	457	83.09	93	16.91	
Total	6305	3268	51.83	3037	48.17	1730	56.96	1307	43.04	

¹ Percent Dismissed and Not Dismissed are of the number Decided.

² Percent Settled and Adjudicated are of the number Not Dismissed.

Figure 1: Type of Appeals Decided in the Regional and Field Offices

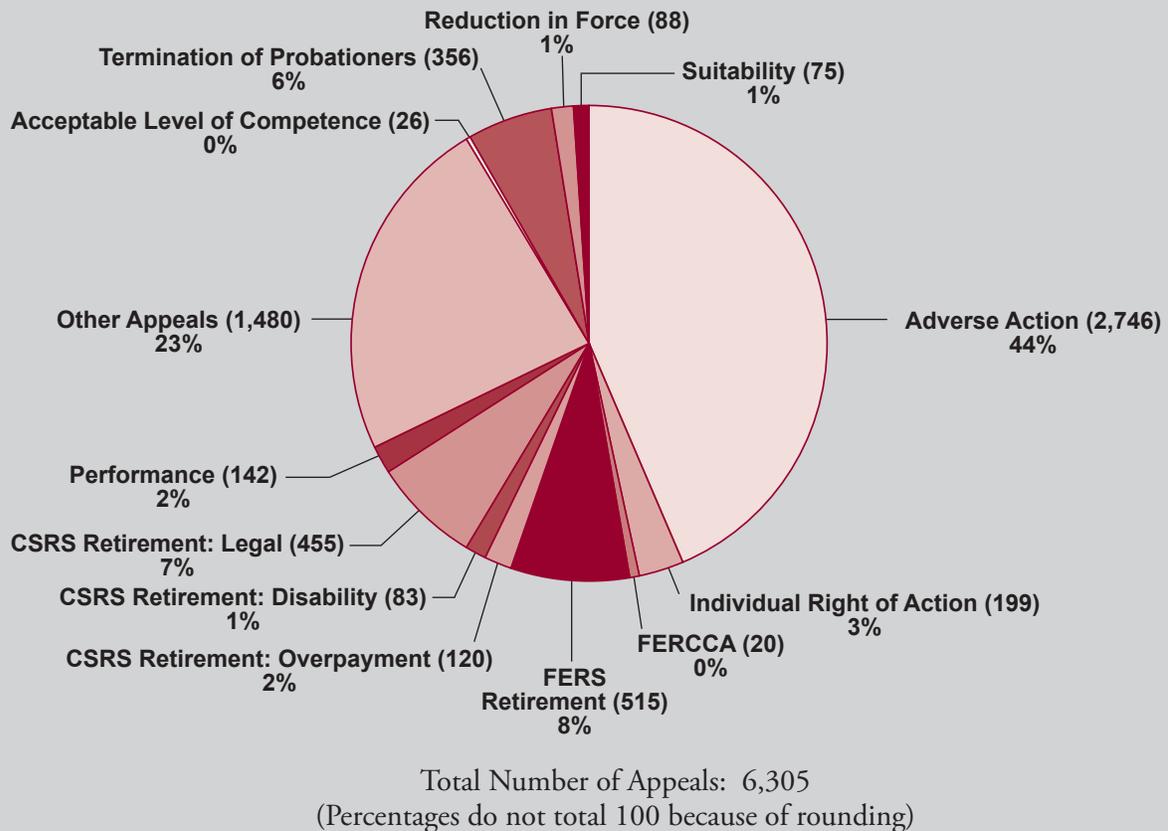


Figure 2: Dispositions: Appeals Not Dismissed by Regional/Field Office

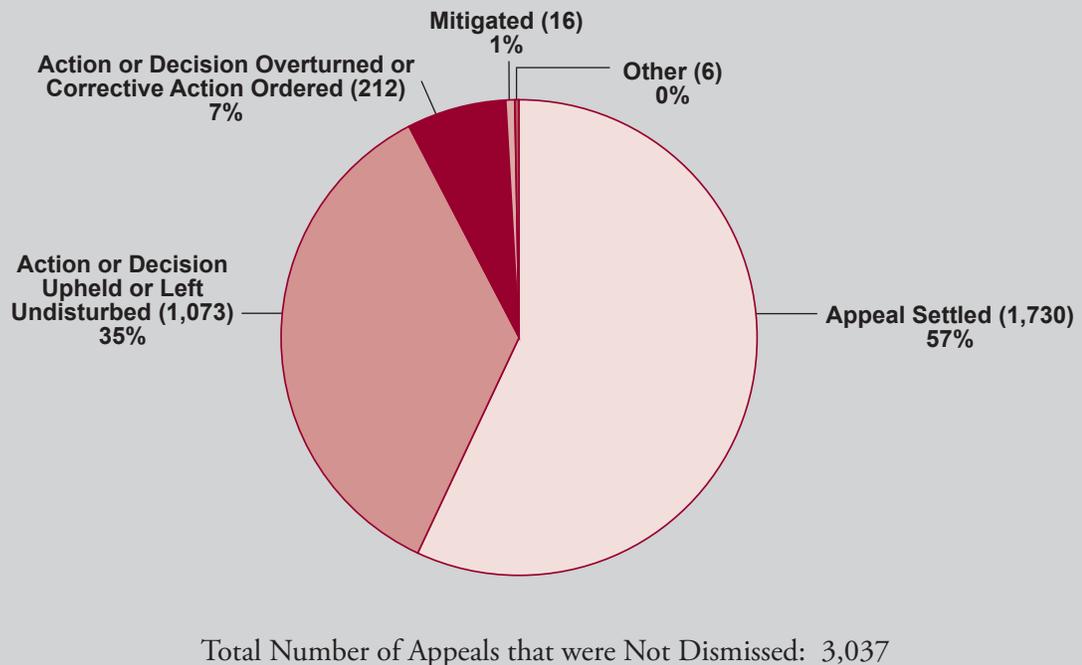
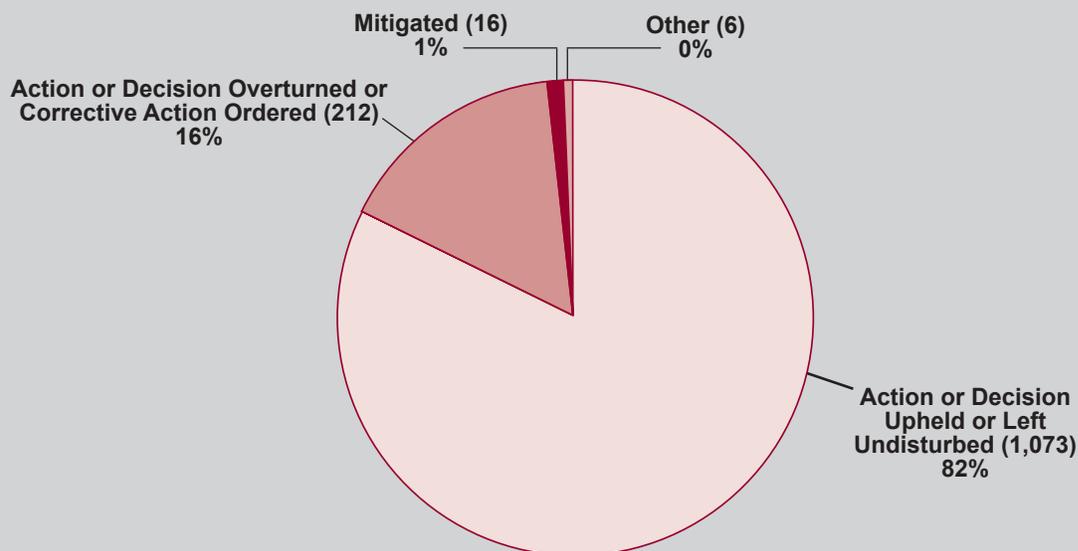


Figure 3: Dispositions: Appeals Not Dismissed or Settled by Regional/Field Office



Based on 1,307 appeals adjudicated on the merits
(Percentages do not total 100 because of rounding)

Table 3: Disposition of Appeals in the Regional and Field Offices, by Agency

	Decided		Dismissed ¹		Not Dismissed ¹		Settled ²		Adjudicated ²	
	#	%	#	%	#	%	#	%	#	%
Office of Personnel Management*	1173	42.1	494	42.1	679	57.9	138	20.3	541	79.7
US Postal Service	1022	63.4	648	63.4	374	36.6	244	65.2	130	34.8
Army	667	42.9	286	42.9	381	57.1	304	79.8	77	20.2
Veterans Affairs	548	54.9	301	54.9	247	45.1	156	63.2	91	36.8
Air Force	416	38.2	159	38.2	257	61.8	197	76.7	60	23.3
Homeland Security	381	60.6	231	60.6	150	39.4	94	62.7	56	37.3
Navy	355	54.6	194	54.6	161	45.4	106	65.8	55	34.2
Treasury	263	47.5	125	47.5	138	52.5	97	70.3	41	29.7
Defense	243	58.0	141	58.0	102	42.0	65	63.7	37	36.3
Justice	229	59.8	137	59.8	92	40.2	61	66.3	31	33.7
Agriculture	182	57.1	104	57.1	78	42.9	52	66.7	26	33.3
Interior	177	53.1	94	53.1	83	46.9	38	45.8	45	54.2
Transportation	126	50.0	63	50.0	63	50.0	33	52.4	30	47.6
Health & Human Services	98	53.1	52	53.1	46	46.9	32	69.6	14	30.4
Commerce	57	54.4	31	54.4	26	45.6	21	80.8	5	19.2
Social Security Administration	55	47.3	26	47.3	29	52.7	15	51.7	14	48.3
Labor	53	49.1	26	49.1	27	50.9	15	55.6	12	44.4

Table 3: Disposition of Appeals in the Regional and Field Offices, by Agency
(Continued)

	Decided		Dismissed ¹		Not Dismissed ¹		Settled ²		Adjudicated ²	
	#	%	#	%	#	%	#	%	#	%
Housing & Urban Development	36	52.8	19	52.8	17	47.2	12	70.6	5	29.4
General Services Administration	32	68.8	22	68.8	10	31.3	6	60.0	4	40.0
Energy	23	78.3	18	78.3	5	21.7	4	80.0	1	20.0
State	20	50.0	10	50.0	10	50.0	3	30.0	7	70.0
Environmental Protection Agency	15	53.3	8	53.3	7	46.7	3	42.9	4	57.1
National Aeronautics and Space Administration	15	66.7	10	66.7	5	33.3	3	60.0	2	40.0
Broadcasting Board of Governors	13	92.3	12	92.3	1	7.7	1	100.0	0	0.0
Education	13	53.8	7	53.8	6	46.2	3	50.0	3	50.0
Government Printing Office	8	50.0	4	50.0	4	50.0	3	75.0	1	25.0
Nuclear Regulatory Commission	8	50.0	4	50.0	4	50.0	2	50.0	2	50.0
Court Services & Offender Supervision	6	33.3	2	33.3	4	66.7	2	50.0	2	50.0
Securities & Exchange Commission	6	50.0	3	50.0	3	50.0	3	100.0	0	0.0
Small Business Administration	6	83.3	5	83.3	1	16.7	0	0.0	1	100.0
National Archives and Records Administration	5	60.0	3	60.0	2	40.0	1	50.0	1	50.0
Smithsonian Institution	5	0.0	0	0.0	5	100.0	5	100.0	0	0.0
Tennessee Valley Authority	5	80.0	4	80.0	1	20.0	0	0.0	1	100.0
Equal Employment Opportunity Commission	4	25.0	1	25.0	3	75.0	2	66.7	1	33.3
Armed Forces Retirement Home	3	0.0	0	0.0	3	100.0	2	66.7	1	33.3
Federal Deposit Insurance Corporation	3	33.3	1	33.3	2	66.7	0	0.0	2	100.0
National Credit Union Administration	3	33.3	1	33.3	2	66.7	2	100.0	0	0.0
Peace Corps	3	0.0	0	0.0	3	100.0	0	0.0	3	100.0
Central Intelligence Agency	2	100.0	2	100.0	0	0.0	0	0.0	0	0.0
Commodity Futures Trading Commission	2	100.0	2	100.0	0	0.0	0	0.0	0	0.0
Consumer Product Safety Commission	2	100.0	2	100.0	0	0.0	0	0.0	0	0.0
Corporation for National & Community Service	2	50.0	1	50.0	1	50.0	1	100.0	0	0.0
Judicial Branch	2	100.0	2	100.0	0	0.0	0	0.0	0	0.0
Other	2	100.0	2	100.0	0	0.0	0	0.0	0	0.0
Pension Benefit Guaranty Corporation	2	0.0	0	0.0	2	100.0	2	100.0	0	0.0
Administrative Office of US Courts	1	100.0	1	100.0	0	0.0	0	0.0	0	0.0
Congress	1	100.0	1	100.0	0	0.0	0	0.0	0	0.0

Table 3: Disposition of Appeals in the Regional and Field Offices, by Agency
(Continued)

	Decided		Dismissed ¹		Not Dismissed ¹		Settled ²		Adjudicated ²	
	#	#	%	#	%	#	%	#	%	
Federal Communications Commission	1	1	100.0	0	0.0	0	0.0	0	0.0	
Federal Reserve System	1	1	100.0	0	0.0	0	0.0	0	0.0	
Federal Trade Commission	1	0	0.0	1	100.0	1	100.0	0	0.0	
Government of the District of Columbia	1	1	100.0	0	0.0	0	0.0	0	0.0	
Library of Congress	1	1	100.0	0	0.0	0	0.0	0	0.0	
National Council on Disability	1	1	100.0	0	0.0	0	0.0	0	0.0	
National Foundation for Arts and the Humanities	1	1	100.0	0	0.0	0	0.0	0	0.0	
National Science Foundation	1	1	100.0	0	0.0	0	0.0	0	0.0	
National Transportation Safety Board	1	0	0.0	1	100.0	0	0.0	1	100.0	
Office of Administration, Executive Office of President	1	0	0.0	1	100.0	1	100.0	0	0.0	
Panama Canal Commission	1	1	100.0	0	0.0	0	0.0	0	0.0	
The World Bank	1	1	100.0	0	0.0	0	0.0	0	0.0	
TOTAL	6305	3268	51.8	3037	48.2	1730	57.0	1307	43.0	

* Most appeals in which OPM is the agency are retirement cases involving decisions made by OPM as the administrator of the Civil Service Retirement System and the Federal Employees Retirement System.

¹ Percentages in columns Dismissed and Not Dismissed are of Decided.

² Percentages in columns Settled and Adjudicated are of Not Dismissed.

Table 4: Disposition of Appeals Adjudicated on the Merits in the Regional and Field Offices, by Agency

	Adjudicated ¹		Affirmed		Reversed		Mitigated Modified		Other	
	#	#	%	#	%	#	%	#	%	
Office of Personnel Management*	541	429	79.3	108	20.0	2	0.4	2	0.4	
US Postal Service	130	103	79.2	22	16.9	5	3.8	0	0.0	
Army	77	70	90.9	6	7.8	1	1.3	0	0.0	
Veterans Affairs	91	78	85.7	10	11.0	3	3.3	0	0.0	
Air Force	60	41	68.3	17	28.3	1	1.7	1	1.7	
Homeland Security	56	49	87.5	5	8.9	2	3.6	0	0.0	
Navy	55	51	92.7	3	5.5	1	1.8	0	0.0	
Treasury	41	39	95.1	2	4.9	0	0.0	0	0.0	
Defense	37	33	89.2	4	10.8	0	0.0	0	0.0	
Justice	31	25	80.6	6	19.4	0	0.0	0	0.0	
Agriculture	26	26	100.0	0	0.0	0	0.0	0	0.0	
Interior	45	41	91.1	2	4.4	0	0.0	2	4.4	

**Table 4: Disposition of Appeals Adjudicated on the Merits
in the Regional and Field Offices, by Agency**

(Continued)

	Adjudicated ¹		Affirmed		Reversed		Mitigated Modified		Other	
	#	%	#	%	#	%	#	%	#	%
Transportation	30		16	53.3	13	43.3	1	3.3	0	0.0
Health & Human Services	14		10	71.4	4	28.6	0	0.0	0	0.0
Commerce	5		4	80.0	1	20.0	0	0.0	0	0.0
Social Security Administration	14		11	78.6	3	21.4	0	0.0	0	0.0
Labor	12		11	91.7	1	8.3	0	0.0	0	0.0
Housing & Urban Development	5		5	100.0	0	0.0	0	0.0	0	0.0
General Services Administration	4		1	25.0	2	50.0	0	0.0	1	25.0
Energy	1		0	0.0	1	100.0	0	0.0	0	0.0
State	7		6	85.7	1	14.3	0	0.0	0	0.0
Environmental Protection Agency	4		4	100.0	0	0.0	0	0.0	0	0.0
National Aeronautics and Space Administration	2		2	100.0	0	0.0	0	0.0	0	0.0
Education	3		2	66.7	1	33.3	0	0.0	0	0.0
Government Printing Office	1		1	100.0	0	0.0	0	0.0	0	0.0
Nuclear Regulatory Commission	2		2	100.0	0	0.0	0	0.0	0	0.0
Court Services & Offender Supervision	2		2	100.0	0	0.0	0	0.0	0	0.0
Small Business Administration	1		1	100.0	0	0.0	0	0.0	0	0.0
National Archives and Records Administration	1		1	100.0	0	0.0	0	0.0	0	0.0
Tennessee Valley Authority	1		1	100.0	0	0.0	0	0.0	0	0.0
Equal Employment Opportunity Commission	1		1	100.0	0	0.0	0	0.0	0	0.0
Armed Forces Retirement Home	1		1	100.0	0	0.0	0	0.0	0	0.0
Federal Deposit Insurance Corporation	2		2	100.0	0	0.0	0	0.0	0	0.0
Peace Corps	3		3	100.0	0	0.0	0	0.0	0	0.0
National Transportation Safety Board	1		1	100.0	0	0.0	0	0.0	0	0.0
TOTAL	1307		1073	82.1	212	16.2	16	1.2	6	0.5

* Most appeals in which OPM is the agency are retirement cases involving decisions made by OPM as the administrator of the Civil Service Retirement System and the Federal Employees Retirement System.

¹ Adjudicated, i.e., not dismissed or settled.

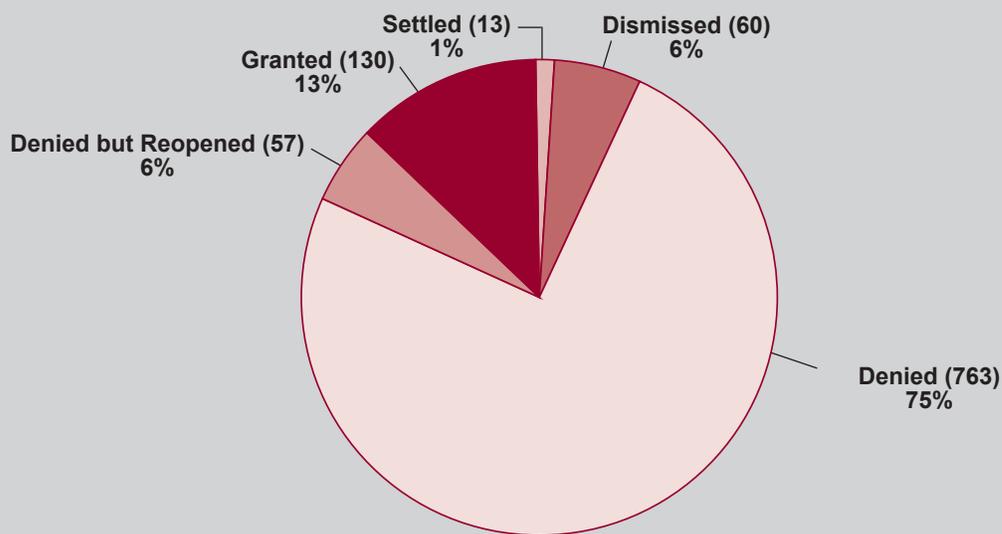
Percentages may not total 100 because of rounding.

Headquarters case processing

Table 5: Disposition of Petitions for Review (PFR) of Initial Decisions by Type of Case

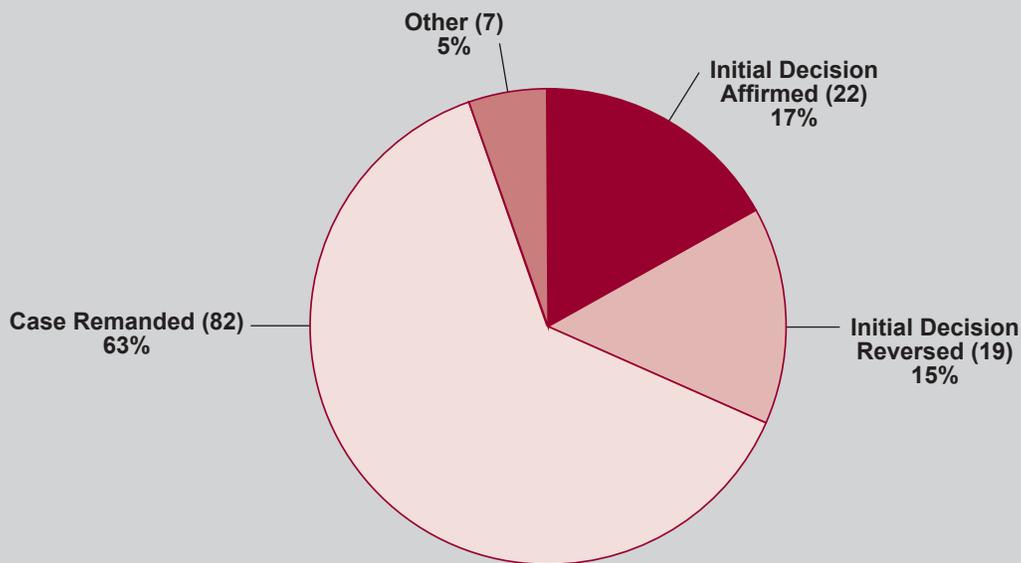
Type of Case	Decided		Dismissed		Settled		Denied		Denied But Reopened		Granted	
	#	#	%	#	%	#	%	#	%	#	%	
Adverse Action by Agency	477	24	5.03	3	0.63	386	80.92	12	2.52	52	10.90	
Termination of Probationers	33	5	15.15	0	0.00	22	66.67	2	6.06	4	12.12	
Reduction in Force	17	1	5.88	0	0.00	16	94.12	0	0.00	0	0.00	
Performance	31	4	12.90	1	3.23	21	67.74	0	0.00	5	16.13	
Acceptable Level of Competence (WIGI)	3	0	0.00	0	0.00	3	100.0	0	0.00	0	0.00	
Suitability	10	1	10.00	0	0.00	7	70.0	0	0.00	2	20.0	
CSRS Retirement: Legal	98	4	4.08	3	3.06	84	85.71	2	2.04	5	5.10	
CSRS Retirement: Disability	20	0	0.00	0	0.00	18	90.0	0	0.00	2	10.00	
CSRS Retirement: Overpayment	13	0	0.00	0	0.00	8	61.54	3	23.08	2	15.38	
FERS Retirement	92	7	7.61	4	4.35	56	60.87	10	10.87	15	16.30	
FERCCA	5	0	0.00	0	0.00	4	80.0	0	0.00	1	20.00	
Individual Right of Action	67	3	4.48	2	2.99	42	62.69	9	13.43	11	16.42	
Other	157	11	7.01	0	0.00	96	61.15	19	12.10	31	19.75	
Total	1023	60	5.87	13	1.27	763	74.58	57	5.57	130	12.71	

Figure 4: Disposition of Petitions for Review of Initial Decisions



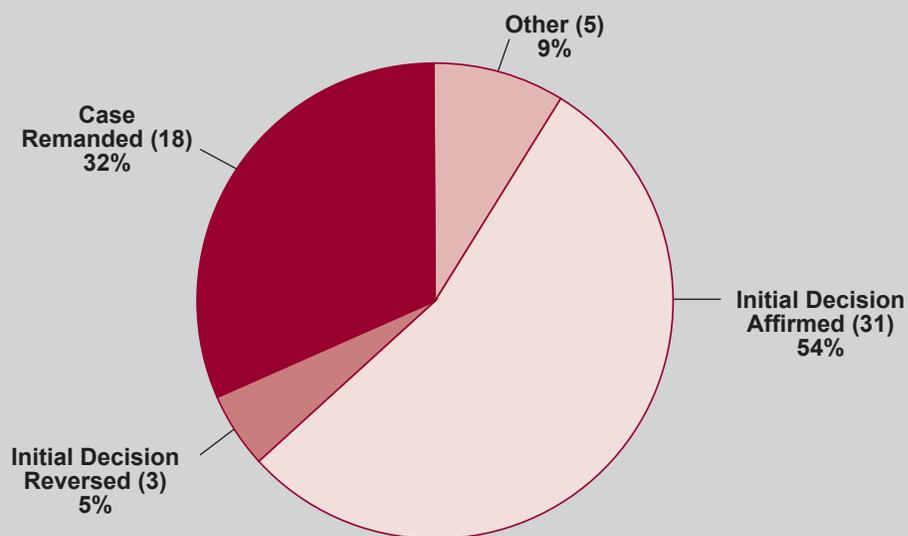
Total Number of Petitions for Review: 1,023

Figure 5: Disposition of Petitions for Review Granted



Based on 130 Petitions for Review Granted

Figure 6: Disposition of Petitions for Review Denied but Reopened



Based on 57 Petitions for Review Denied But Reopened

Table 6: Disposition of Petitions for Review of Initial Decisions, by Agency

	Decided		Dismissed		Settled		Denied		Denied But Reopened		Granted	
	#	%	#	%	#	%	#	%	#	%	#	%
Office of Personnel Management*	212	5.66	12	5.66	6	2.83	155	73.11	14	6.60	25	11.79
US Postal Service	173	3.47	6	3.47	1	0.58	132	76.30	7	4.05	27	15.61
Veterans Affairs	99	6.06	6	6.06	2	2.02	81	81.82	4	4.04	6	6.06
Army	76	13.16	10	13.16	0	0.00	51	67.11	2	2.63	13	17.11
Defense	59	5.08	3	5.08	0	0.00	48	81.36	5	8.47	3	5.08
Homeland Security	52	5.77	3	5.77	0	0.00	41	78.85	4	7.69	4	7.69
Air Force	47	8.51	4	8.51	1	2.13	29	61.70	5	10.64	8	17.02
Navy	44	0.00	0	0.00	1	2.27	36	81.82	1	2.27	6	13.64
Justice	40	7.50	3	7.50	0	0.00	27	67.50	4	10.00	6	15.00
Treasury	39	10.26	4	10.26	0	0.00	24	61.54	2	5.13	9	23.08
Interior	33	6.06	2	6.06	1	3.03	29	87.88	1	3.03	0	0.00
Agriculture	32	3.13	1	3.13	0	0.00	24	75.00	4	12.50	3	9.38
Transportation	28	7.14	2	7.14	1	3.57	17	60.71	2	7.14	6	21.43
Social Security Administration	15	0.00	0	0.00	0	0.00	15	100.00	0	0.00	0	0.00
Health & Human Services	10	0.00	0	0.00	0	0.00	9	90.00	0	0.00	1	10.00
Commerce	8	12.50	1	12.50	0	0.00	4	50.00	1	12.50	2	25.00
Labor	8	12.50	1	12.50	0	0.00	7	87.50	0	0.00	0	0.00
Nuclear Regulatory Commission	5	0.00	0	0.00	0	0.00	4	80.00	0	0.00	1	20.00
Housing & Urban Development	4	25.00	1	25.00	0	0.00	2	50.00	0	0.00	1	25.00
State	4	0.00	0	0.00	0	0.00	3	75.00	0	0.00	1	25.00
Small Business Administration	4	0.00	0	0.00	0	0.00	3	75.00	0	0.00	1	25.00
Armed Forces Retirement Home	3	0.00	0	0.00	0	0.00	2	66.67	0	0.00	1	33.33
Broadcasting Board of Governors	3	33.33	1	33.33	0	0.00	1	33.33	0	0.00	1	33.33
Environmental Protection Agency	3	0.00	0	0.00	0	0.00	1	33.33	0	0.00	2	66.67

Table 6: Disposition of Petitions for Review of Initial Decisions, by Agency

(Continued)

	Decided		Dismissed		Settled		Denied		Denied But Reopened		Granted	
	#	%	#	%	#	%	#	%	#	%	#	%
General Services Administration	3	0.00	0	0.00	0	0.00	3	100.00	0	0.00	0	0.00
Education	2	0.00	0	0.00	0	0.00	2	100.00	0	0.00	0	0.00
Energy	2	0.00	0	0.00	0	0.00	2	100.00	0	0.00	0	0.00
Federal Deposit Insurance Corporation	2	0.00	0	0.00	0	0.00	2	100.00	0	0.00	0	0.00
Peace Corps	2	0.00	0	0.00	0	0.00	2	100.00	0	0.00	0	0.00
Agency for International Development	1	0.00	0	0.00	0	0.00	0	0.00	0	0.00	1	100.00
Commodity Futures Trading Commission	1	0.00	0	0.00	0	0.00	0	0.00	1	100.00	0	0.00
Equal Employment Opportunity Commission	1	0.00	0	0.00	0	0.00	0	0.00	0	0.00	1	100.00
Federal Trade Commission	1	0.00	0	0.00	0	0.00	0	0.00	0	0.00	1	100.00
Government Printing Office	1	0.00	0	0.00	0	0.00	1	100.00	0	0.00	0	0.00
National Aeronautics and Space Administration	1	0.00	0	0.00	0	0.00	1	100.00	0	0.00	0	0.00
National Archives and Records Administration	1	0.00	0	0.00	0	0.00	1	100.00	0	0.00	0	0.00
National Transportation Safety Board	1	0.00	0	0.00	0	0.00	1	100.00	0	0.00	0	0.00
Office of Special Counsel	1	0.00	0	0.00	0	0.00	1	100.00	0	0.00	0	0.00
Smithsonian Institution	1	0.00	0	0.00	0	0.00	1	100.00	0	0.00	0	0.00
Tennessee Valley Authority	1	0.00	0	0.00	0	0.00	1	100.00	0	0.00	0	0.00
TOTAL	1023	5.87	60	1.27	13	74.58	763	57	5.57	130	12.71	

* Most appeals in which OPM is the agency are retirement cases involving decisions made by OPM as the administrator of the Civil Service Retirement System and the Federal Employees Retirement System.

Percentages may not total 100 because of rounding.



Summaries of Merit Systems Studies

The MSPB issued reports to the President and Congress on such issues as Federal employee perceptions about the practice of merit in the workplace and entry-level hiring in the Federal Government. The MSPB issued four editions of the *Issues of Merit* newsletter which included articles on improving Federal assessment practices, survey findings on how to better attract entry-level and upper level new hires, and the progress being made toward executive pay for performance. The MSPB also administered the FY 2007 Merit Principles Survey (MPS) to almost 69,000 Federal employees and managers and administered another governmentwide survey on the career advancement issues of Federal employees.

Accomplishing Our Mission: Results of the Merit Principles Survey 2005

The MSPB conducted the Merit Principles Survey (MPS) in FY 2005 to elicit the views of Federal employees about the practice of merit in the workplace including working conditions, job satisfaction, and interactions with their coworkers and supervisors. We published a report of the survey findings in FY 2007. The report reveals that Federal employees largely agree that they are well managed, have jobs they like, and are motivated by the opportunity to help their agencies succeed.

Employees at all levels confirmed that they are dedicated to ensuring that their agencies achieve their missions. However, they are concerned about how the Federal Government can maintain a qualified and motivated workforce. The MPS 2005 also found continuing high job satisfaction despite perceptions of less organizational stability and fear of pending changes in the Federal pay system.

The report also explores challenges agencies face in managing the workforce. For example, hiring officials are often not satisfied with the applicant pools available to fill Federal job vacancies. Employees already on the job would like additional training to perform their jobs at a higher level of competence. A large percentage of nonsupervisory employees feel uninformed about performance management practices, organizational changes, and other issues. Additionally, both supervisors and nonsupervisors report a moderate level of serious conflict in the workplace that may erode the motivation of some employees to succeed.

The good news is that most employees and their supervisors have formed good relationships and are working together to meet these challenges. A key finding in this report is the importance of trust between employees and their first-line supervisors.

Attracting the Next Generation: A Look at Federal Entry Level New Hires

There is concern that the Federal Government is facing a “brain drain” as the result of an aging workforce and high retirement eligibility rates. Using input from new entry-level employees about why they chose to work for the Federal Government and what obstacles they faced in the job search, the MSPB completed a study that assesses how Federal agencies can better attract and select qualified applicants for entry-level opportunities to build a sufficient pipeline for journey-level positions.

The research points to a number of positive conclusions about the Federal Government’s ability to attract highly qualified candidates. The Federal Government offers what many new hires—regardless of age or generation—want in an employer, including job security, good benefits and the ability to make a difference with their work. In addition, many of the new hires faced fewer obstacles in the hiring process than one might expect, were fairly determined to obtain a Federal job, and plan to stay with the Government for a long time.

However, there are areas where the Government can improve. For instance, it appears that agencies are relying more and more on excepted service appointment authorities to hire new employees. The report cautions that these authorities can inadvertently circumvent merit because they often narrow recruitment sources, potentially short-circuiting fair and open competition.

The MSPB makes a number of recommendations that agencies and Federal policy makers should consider when reflecting on how to improve the Federal hiring process. In particular, we recommend that agencies use a variety of recruitment strategies to reach a large segment of society, use better assessment tools to distinguish the most qualified candidates, and not rely on generational stereotypes to target applicants.

***Issues of Merit* Newsletter**

The MSPB’s *Issues of Merit* newsletter is designed to offer insights and analyses on topics related to Federal human capital management—particularly findings and recommendations from MSPB’s independent research—to help improve the Government’s merit systems. The newsletter’s target audience includes Federal policy-makers, managers and executives, human resources practitioners, social science researchers, and academics.

The MSPB issued four editions of the *Issues of Merit* newsletter in FY 2007. Each of the four issues included findings from the MSPB's research, articles to help clarify readers' understanding of employment issues, and perspectives from the Director of the Office of Policy and Evaluation (OPE) about specific human capital matters. To communicate research findings, newsletter articles addressed topics such as what factors influence whether or not agencies recommend their agency as a place to work, survey findings on how to better attract entry-level and upper level new hires, and how agencies can balance their training strategies. Articles provided insight into issues like how to coach employees, using better assessment instruments, and agency best practices in keeping in touch with retirees, establishing intern programs, and making use of veterans' skills. The OPE Director addressed issues such as the perception of favoritism in the Federal workforce, how to improve applicant assessment tools, issues and trends that will affect the future workforce, and the role of human resources in addressing organizational challenges.

Merit Principles Survey 2007

The MSPB has conducted the Governmentwide Merit Principles Survey (MPS) every few years for the past two decades. Each administration of the MPS tracks the incidence of prohibited personnel practices among Federal employees, assesses the degree to which merit principles are followed, and gathers information to support OPE research studies. OPE conducted preparatory work for the MPS during FY 2006 and administered the survey during FY 2007.

The MPS asked employees, supervisors, and higher level leaders to share their perceptions of the implementation of the merit system in the workplace. The topics addressed included the merit system principles, job satisfaction, supervision, performance management, training and development, and agency leadership. The MPS was administered to 68,789 employees in 28 agencies in the fall of 2007. Sixty percent of these employees responded to the survey. Fourteen of the participating agencies used the MPS to conduct their annual employee survey, required by the National Defense Authorization Act for Fiscal Year 2004. We provided these agencies with reports and raw data files of the annual survey questions. During FY 2008, we will analyze the MPS data and prepare a written report of the results for the President and Congress.

Career Advancement Survey

As part of the MSPB's research initiative to evaluate how fairly Federal employees feel they are treated in terms of career advancement, we developed the Career Advancement Survey. The survey covered a variety of topics, including work satisfaction, career experiences, perceptions of the work environment, pay and performance management, and work/life issues. In FY 2007, the MSPB administered

this survey via the web and paper to a stratified random sample of full-time permanent employees in over 30 agencies. We received responses from 11,538 individuals for a response rate of 53 percent.

We will compare the results of the Career Advancement Survey with similar items on earlier surveys to provide a longitudinal perspective on attitudes within the Federal Government. We will be able to analyze results by sex, race/ethnicity and income level. We will also examine our findings in the context of changes in the composition of the workforce, based upon analysis of the Civilian Personnel Data File. These results will be combined into a future report for the President and Congress.



Significant Actions of the Office of Personnel Management (OPM)

As required by statute, the MSPB reports on the significant actions of OPM. Below, we list and briefly discuss the OPM actions in these areas that have the greatest long-term implications for the Federal civil service. This list is not exhaustive.

Policy and leadership

In FY 2007, OPM addressed several human resources issues. While each individual resolution was significant, it is perhaps equally noteworthy that in FY 2007 OPM demonstrated a commendable commitment to resolving multiple problem areas that had required attention previously.

Clarification of adverse action rules

In May 2007, OPM issued new proposed regulations to address changes in case law that have taken place over the past decade,¹ including those raised in the MSPB's 2006 report, *Navigating the Probationary Period After Van Wersch and McCormick*. OPM's proposed regulations clarify the adverse action rules already in place as a result of court and Board decisions.

Significance:

At the end of FY 2006, the MSPB issued a report which noted that in 1999 the Federal Circuit issued a decision that invalidated certain OPM regulations related to trial periods (and later probationary periods), yet OPM's regulations remained unchanged, creating potential difficulties for agencies seeking to have their actions upheld by the MSPB and its reviewing court. OPM's new proposed regulations should help reduce any agency or employee confusion about agencies' obligations when taking adverse actions against individuals who work for them. The new regulations should make it easier for agencies to comply with the law.

Administrative Law Judge (ALJ) examinations

In May 2007, OPM announced a new ALJ examination using a new examining process. This was the first time since 1999 that the ALJ register was opened to individuals who did not have eligibility for 10-point preference. Applicants who

¹ http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2007_register&docid=E7-8061

successfully completed the examination had their names placed on the ALJ register which OPM uses to make referrals to agencies for employment.

Significance:

With an average age in excess of 60 years, the ALJ population is particularly vulnerable to the effect of the expected retirement wave. One possible reason for the higher-than-typical average age for ALJs is that the examination method previously in place was suspended in 1999 as a result of litigation, and the register had not been open to all qualified U.S. citizens since then. (In 2003, OPM began re-using the examination, but only accepted applications from veterans eligible for 10-point preference.) Given that approximately 80 percent of ALJs are employed by the Social Security Administration, and the expected influx of baby boomer retirement applications in the next decade, the availability of a new register is of clear importance.

Compliance and accountability

Senior Executive Service (SES) systems certification

In its FY 2007 Performance and Accountability Report, OPM reported that 33% of agency SES systems that applied for certification have been fully certified.

Significance:

The National Defense Authorization Act for Fiscal Year 2004 established a new performance-based pay system for members of the Senior Executive Service, but agency systems had to be certified by OPM. Agency certification was initially limited, likely in large part because of the need to have a system in place for two years before full certification could be granted.² As a result, only 3 percent of agency SES systems that sought certification had received full certification in FY 2006. However, in FY 2007, that number increased to 33 percent, three times as many systems as OPM had targeted for certification in FY 2007.³ Given the large number of Federal employees moving into pay for performance systems (most notably in DoD), and the importance of leading change at the top, this increase in certified agency SES systems is noteworthy. We hope the number of fully certified agency systems will continue to increase. However, the certification of a system does not automatically correlate to its effectiveness. In FY 2008, OPM announced it would conduct a survey to measure how executives perceive their systems, and we look forward to seeing the results.

² 5 CFR 430.405 (b) (5)

³ OPM PAR, p. 18

Electronic Official Personnel Folders (eOPF)

By the end of FY 2007, 46 percent of Federal agencies had switched to the use of an eOPF – an electronic record of personnel actions throughout an employee's career.

Significance:

Electronic OPFs help agencies and employees in the short-term, as well as employees and OPM in the long term. In the short term, eOPF systems make it easier for agencies to provide employees with copies of their personnel documents. (The most desirable eOPF systems will enable employees to use a secure system to view their own OPF.) In the long term, OPM is expecting to process an atypically large number of retirement requests, and electronic OPFs should help it process these requests more quickly and efficiently.

Delivery of services and products

Automated Recruitment Guidance

In FY 2007, OPM introduced to its website the Hiring Toolkit and the Personnel Assessment and Selection Resource. With the Hiring Toolkit, OPM emphasized the element of attracting candidates and moving the process along quickly, while the Personnel Assessment and Selection Resource balanced that with more comprehensive guidance on how to create assessment tools and what benefits each assessment tool has to offer.

Significance:

Streamlining the recruitment process is necessary if the Government is to compete for talent. However, it is also necessary to select the best candidates in order to have an efficient and effective workforce as intended by the merit principles. By providing guidance in each of these areas through its website, OPM took advantage of technology to help agencies face their recruitment challenges.

Improvements to Labor Agreement Information Retrieval System (LAIRS)

In September 2007, a re-designed LAIRS system was brought on-line on OPM's website.

Significance:

The previous version of LAIRS was technologically archaic and difficult to use, whereas the new system enables users to design a search more effectively and to craft reports. By creating a system that can be used more effectively, OPM increases the likelihood that agencies will submit timely data and that the information will be put into use.

Electronic Delivery of Security Clearances

In August 2007, OPM announced a pilot program to deliver completed background investigations electronically, beginning with the U.S. Army Central Personnel Security Clearance Facility.

Significance:

Paper-based delivery is largely inefficient in today's world. Not only are there postage costs and days lost while the paperwork is moved, but paper documents also require additional tracking processes. With this program, OPM should be able to take better advantage of secure technology to move cases to the clearance stage faster.

Federal Employees Dental and Vision Insurance Program

Offering supplemental dental and vision insurance is a new program that took effect in 2007. According to OPM figures, there were over 700,000 elections to enroll in three vision and seven dental plans.

Significance:

The Federal Government has been—and will continue to be—in competition with the private sector and non-profit organizations to recruit and retain the most talented employees. Providing access to these additional benefits may assist agencies as they seek to make themselves attractive to potential employees.



Financial Summary

Fiscal Year 2007 Financial Summary

(dollars in thousands)

Financial Sources

Appropriations	\$36,063
Civil Service Retirement and Disability Trust Fund	2,603
Carryover Authority	103
Total Revenue	\$38,769

Obligations Incurred

Personnel Compensation	\$24,875
Personnel Benefits	5,688
Benefits to Former Employees	17
Travel of Persons	472
Transportation of Things	173
Rental Payments	3,316
Communications, Utilities, and Miscellaneous	313
Printing and Reproduction	150
Other Services	2,367
Supplies and Materials	318
Equipment	532
Land and Structure	235
Total Obligations Incurred	\$38,456
OBLIGATED BALANCE	\$313

FISCAL YEAR
2007



Annual Report



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