MSPB Appeal Form (Form 185)

INSTRUCTIONS FOR COMPLETING YOUR APPEAL

MSPB's Authority to Review Employment-Related Actions or Decisions

The MSPB (the Board)'s legal authority (jurisdiction) to review employment-related actions or decisions is limited to those matters specifically entrusted to it by law, rule, or regulation. A listing of matters over which the Board has jurisdiction can be found in the Board's regulations at 5 C.F.R. § 1201.3. The administrative judge assigned to your case will determine whether the Board has jurisdiction over the particular circumstances of your appeal.

Option to File Electronically and Where to Obtain Additional Information

If you prefer to file your appeal electronically instead of using this form, please visit the Board's e-Appeal Online: **https://e-appeal.mspb.gov.** Much more information about the adjudication of appeals before the MSPB, including the Board's regulations, may be found at the Board's website: www.mspb.gov. The Board's regulations are also published in the Code of Federal Regulations, 5 C.F.R. § 1201 et seq., available in many libraries.

Time Limits for Filing an Appeal

You must file your appeal within **30 calendar days** of the effective date, if any, of the action or decision you are appealing, or the date you received the agency's decision, whichever is later. (Please note that Individual Right of Action (IRA), Uniformed Services Employment and Reemployment Rights (USERRA), and Veterans Employment Opportunities Act (VEOA) appeals have different time limits, as described in **Appendix A**). In limited circumstances, the 30-day filing time limit may be extended if you and the agency mutually agree in writing to try to resolve your dispute through an alternative dispute resolution process before you file an appeal. *See* 5 C.F.R. § 1201.22(b)-(c). The date of filing is the date your appeal is postmarked, the date of the facsimile (fax) transmission, the date it is delivered to a commercial overnight delivery service, the date of receipt in the regional or field office if you personally deliver it, or the date of submission if you file your appeal electronically. **Do not delay filing your appeal merely because you do not currently have the documents requested in this form.**

Where to File an Appeal

You must file your appeal of the agency's action or decision with the Board's regional or field office responsible for your actual or potential duty station. If you are appealing a retirement or suitability decision by the Office of Personnel Management (OPM), you must file your appeal with the Board's regional or field office responsible for where you live. *See* 5 C.F.R. §§ 1201.4(d) and 1201.22(a). For a list of regional and field offices, see Appendix B.

Attachments

Please submit only the attachments requested in this form. The filing of an appeal is just the beginning of the adjudication process, and you will have additional opportunities to submit

evidence and argument before a decision is issued. Further, the agency will submit all the documents contained in its record of the action. 5 C.F.R. § 1201. 25(c).

Part 1 – Appellant and Agency Information

Everyone must complete Part 1.

Please type or print legibly.	
1. Name *(last, first, middle)*	Please list your first name as it appears in your official personnel records. For example, if your first name is "William" on your official personnel records, please list it that way on the appeal form, not "Bill" or "Willy."
2. Present address *(number and street, city, State, and zip code)* **You must promptly notify the Board in writing of any change in your mailing address while your appeal is pending.** Address: City, State, Zip code:	
3. Telephone Numbers *(include area code)* and Email Address **You must promptly notify the Board in writing of any change in your telephone number(s) or e-mail address while your appeal is pending.** Home: ( ) Work: ( ) Fax: ( ) Cell: ( ) Email Address:	
4. Name, address, and telephone number of the agency that took the action or made the decision you are appealing. Name: Subcomponent: Address (City, State, Zip Code): Phone Number:	

5. Your Federal employment status at the time of the action or decision you are appealing:	6. Type of appointment (if applicable):
[ ] Permanent **[ ]** Temporary **[ ]** Term **[ ]** Seasonal **[ ]** Applicant **[ ]** Retired **[ ]** None	**[ ]** Competitive **[ ]** Excepted **[ ]** Postal Service **[ ]** SES **[ ]** Other (*describe*):

7. Your position, title, grade, and duty station at the time of the action or decision you are appealing (if applicable):	8. Are you **entitled** to veterans' preference? **See 5 U.S.C. § 2108.**
Occupational Series or Cluster: Grade or Pay Band: Position Title: Duty Station:	**[ ]** Yes **[ ]** No

9. Length of Federal service (if applicable):	10. Were you serving a probationary, trial, or initial service period at the time of the action or decision you are appealing?
	[ ] Yes **[ ]** No

11. **HEARING:** You may have a right to a hearing before an administrative judge. If you elect not to have a hearing, the administrative judge will make a decision on the basis of the submissions of the parties. Do you want a hearing?

[ ] Yes **[ ]** No

Part 2 – Agency Personnel Action or Decision (non-retirement)

Complete this part if you are appealing a Federal agency personnel action or decision *other than* a decision directly addressing your retirement rights or benefits. Certain actions that might not otherwise be appealable to the Board may be challenged as an individual right of action (IRA) appeal under the Whistleblower Protection Act (WPA), or as an appeal under the Uniformed Services Employment and Reemployment Rights Act (USERRA), or the Veterans Employment Opportunities Act (VEOA). An explanation of these three types of appeals is provided in Appendix A.

12. Check the box that best describes the agency **personnel action or decision** you are appealing. (If you are appealing more than one action or decision, check each box that applies.)

[ ] Removal (termination after completion of probationary or initial service period) **[ ]** Involuntary resignation

[ ] Termination during probationary or initial service period **[ ]** Involuntary retirement

(Continued next page)

[ ] Reduction in grade, pay, or band **[ ]** Suspension for more than 14 days **[ ]** Failure to restore, reemploy, reinstate or improper restoration, reemployment, or reinstatement **[ ]** Negative suitability determination	**[ ]** Denial of within-grade increase **[ ]** Furlough of 30 days or less **[ ]** Separation, demotion or furlough for more than 30 days by reduction in force (RIF) **[ ]** Other action or decision (describe):

13. Date you received the agency's final decision letter (if any) *(MM/DD/YYYY)*:	14. Effective date (if any) of the agency action or decision *(MM/DD/YYYY)*:

15. Prior to filing this appeal, did you and the agency mutually agree in writing to try to resolve the matter through an alternative dispute resolution (ADR) process?
[ ] Yes ***(attach a copy of the agreement)*** **[ ]** No

16. Explain briefly why you think the agency was wrong in taking this action. In challenging such an action, you may choose to allege that the agency engaged in harmful procedural error, committed a prohibited personnel practice, or engaged in one of the other claims listed in Appendix A. Attach the agency's proposal letter, decision letter, and SF-50, if available. Attach additional sheets if necessary (bearing in mind that there will be later opportunities to supplement your filings).

17. With respect to the agency personnel action or decision you are appealing, have you, or has anyone on your behalf, filed a grievance under a negotiated grievance procedure provided by a collective bargaining agreement?

[ ] Yes [ ] No

If "Yes," attach a copy of the grievance, enter the date it was filed, and enter the place where it was filed if different from your answer to question 4 in Part 1.

Date Filed *(MM/DD/YYYY):*

If a decision on the grievance has been issued, attach a copy of the decision and enter the date it was issued *(MM/DD/YYYY):*

Answer Question 18 ONLY if you are filing an IRA appeal.

18. If you filed a whistleblowing complaint with the Office of Special Counsel (OSC), provide the date on which you did so and the date on which OSC made a decision or terminated its investigation, if applicable. Attach copies of your complaint and OSC's termination of investigation letter, notifying you of your right to seek corrective action from the Board.

Answer Question 19 ONLY if you are filing a USERRA or VEOA appeal.

19. If you filed a complaint with the Department of Labor (DOL), list the date on which you did so, and attach a copy of your complaint. If DOL has made a decision on your complaint, list the date of this decision, and attach a copy of it. If DOL has not made a decision on your complaint within 60 days from the date you filed it, state whether you have notified DOL of your intent to file an appeal with the Board, and attach a copy of such notification.

Part 3 – OPM or Agency Retirement Decision

Complete this part if you are appealing a decision of the Office of Personnel Management (OPM) or other Federal agency directly addressing your retirement rights or benefits.

20. In which retirement system are you enrolled? **[ ]** CSRS **[ ]** CSRS Offset **[ ]** FERS **[ ]** Other (*describe*):	21. Are you a: **[ ]** Current Employee **[ ]** Annuitant **[ ]** Surviving Spouse **[ ]** Other (*describe*):
22. If retired, date of retirement, or if unknown, approximate date *(MM/DD/YYYY)*:	
23. Describe the retirement decision you are appealing.	
24. Have you received a final or reconsideration decision from OPM or another Federal agency? **[ ]** Yes *(attach a copy)* **[ ]** No If "Yes," on what date did you receive the decision *(MM/DD/YYYY)*? Provide the OPM processing (CSA or CSF) number in your appeal:	

25. Explain briefly why you think OPM or another Federal agency was wrong in making this decision.

Part 4 – Designation of Representative

26. Do you wish to designate an individual or organization to represent you in this proceeding before the Board? (You may designate a representative at any time. However, it is unlikely that the appeals process will be delayed for reasons related to obtaining or maintaining representation. Moreover, you must promptly notify the Board in writing of any change in your representation.) **[ ] Yes *(complete the information below and sign)*** **[ ] No**	
DESIGNATION: "I hereby designate _____ to serve as my representative during the course of this appeal. I understand that my representative is authorized to act on my behalf. In addition, I specifically delegate to my representative the authority to settle this appeal on my behalf. **I understand that any limitation on this settlement authority must be filed in writing with the Board.**	
Representative's address *(number and street, city, State and Zip code*). Address: City, State, Zip code:	Representative's telephone numbers *(include area code)* and email address: Office: Fax: Other: Email address:
SIGN BELOW TO MAKE YOUR DESIGNATION OF REPRESENTATIVE EFFECTIVE _____ Appellant's Signature Date	

Part 5 -- Certification

27. **I certify that all of the statements made in this form and any attachments are true, complete, and correct to the best of my knowledge and belief.**

_____

Signature of Appellant or Representative Date

Privacy Act Statement

This form requests personal information that is relevant and necessary to reach a decision in your appeal. The Merit Systems Protection Board collects this information in order to process appeals under its statutory and regulatory authority. Because your appeal is a voluntary action, you are not required to provide any personal information in connection with it. However, failure to supply the Merit Systems Protection Board with all the information essential to reach a decision in your case could result in the rejection of your appeal.

You should know that the decisions of the Merit Systems Protection Board on appeals are final administrative decisions and, as such, are available to the public under the provisions of the Freedom of Information Act. Additionally, it is possible that information contained in your appeal file may be released as required by the Freedom of Information Act. Some information about your appeal will also be used in depersonalized form as a database for program statistics.

Public Reporting Burden

The public reporting burden for this collection of information is estimated to vary from 20 minutes to 4 hours, with an average of 60 minutes per response, including time for reviewing the form, searching existing data sources, gathering the data necessary, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to Office of the Clerk of the Board, Merit Systems Protection Board, 1615 M Street, N.W., Washington, DC 20419.

APPENDIX A

ADDITIONAL CLAIMS

Harmful Procedural Error: Error by the agency in the application of its procedures that is likely to have caused the agency to reach a conclusion different from the one it would have reached in the absence or cure of the error. The burden is upon the appellant to show that the error was harmful, i.e., that it caused substantial harm or prejudice to his or her rights. 5 C.F.R. § 1201.56(c)(3).

Prohibited Personnel Practices: A claim that the agency action or decision you are challenging was the result of one of the personnel practices prohibited by 5 U.S.C. § 2302(b). The prohibited personnel practices most likely to be relevant as an affirmative defense in an MSPB proceeding are: unlawful discrimination under subsection (b)(1); retaliation for protected whistleblowing under subsection (b)(8); and retaliation for other protected activity under subsection (b)(9).

- **Unlawful Discrimination**: A claim that the agency action was the result of prohibited discrimination based on race, color, religion, sex, national origin, disability, age, marital status, or political affiliation. *See* 5 U.S.C §§ 2302(b)(1) and 7702; 5 C.F.R. Part 1201, Subpart E; 29 C.F.R. Part 1630 and Appendix to Part 1630. If you filed a formal discrimination complaint, give the date on which you did so, state whether and when the agency issued a final decision on your discrimination complaint, and provide copies of both.
- **Retaliation for whistleblowing activity under 5 U.S.C. § 2302(b)(8):** A claim that the agency action was taken in retaliation for the disclosure of information the individual reasonably believes demonstrates a violation of law, rule, or regulation, gross mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health or safety. *See* 5 C.F.R. § 1209.4(b).
- **Retaliation for other protected activity under 5 U.S.C. § 2302(b)(9)**: A claim that the agency action was taken in retaliation for the exercise of a right, such as the filing of an appeal, complaint, or grievance, testifying for or otherwise lawfully assisting an individual in the exercise of an appeal, complaint, or grievance, cooperating with or disclosing information to the Inspector General of an agency or the Special Counsel, or refusing to obey an order that would require the individual to violate the law.

Violation of Rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA): A claim that the agency action violated rights and benefits under chapter 43 of title 38, U.S.C., by denying initial employment, reemployment, retention in employment, promotion, or any benefit of employment on the basis of membership, application for membership, performance of service, application for service, or obligation to perform service in a uniformed service. *See* 5 C.F.R. § 1208, Subpart B.

Violation of a Law or Regulation relating to Veterans' Preference pursuant to the Veterans Employment Opportunities Act (VEOA): A claim that the agency action violated rights related to veterans' preference under any statute or regulation. *See* 5 C.F.R. § 1208, Subpart C.

Not in accordance with law: A claim that the agency's action was unlawful in its entirety, that is, there is no legal authority for the action.

IRA, USERRA, and VEOA APPEALS

The law provides for three types of appeals in certain situations that might not otherwise be appealable to the MSPB: Individual Right of Action (IRA) appeals under the Whistleblower Protection Act pursuant to 5 U.S.C. § 1221; appeals under the Uniformed Services Employment and Reemployment Rights Act (USERRA) pursuant to 38 U.S.C. § 4324; and appeals under the Veterans Employment Opportunities Act (VEOA) pursuant to 5 U.S.C. § 3330a. **Note**: As previously set forth, claims of retaliation for whistleblowing, as well as claims under USERRA and VEOA, may be brought as additional claims in cases that are otherwise appealable to the Board.

IRA Appeals under the Whistleblower Protection Act. Subsection (b)(8) of 5 U.S.C. § 2302 makes it a prohibited personnel practice to threaten, propose, take, or not take a personnel action listed in 5 U.S.C. § 2302(a)(2) because of an appellant's whistleblowing disclosure. Whistleblowing is the disclosure of information that the individual reasonably believes shows a violation of law, rule, or regulation, gross mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health or safety. 5 C.F.R. § 1209.4(b). If the personnel action allegedly taken in reprisal for a whistleblowing disclosure is not otherwise appealable to the Board, you must first file a whistleblower complaint with the Office of Special Counsel (OSC) and exhaust the procedures of that office, *see* 5 U.S.C. § 1214(a)(3), before you may file an IRA appeal with the Board under 5 U.S.C. § 1221.

USERRA Appeals. In USERRA appeals, appellants allege that agencies have violated their rights and benefits under chapter 43 of title 38, U.S.C., by denying initial employment, reemployment, retention in employment, promotion, or any benefit of employment on the basis of their membership, application for membership, performance of service, application for service, or obligation to perform service in a uniformed service. *See* 5 C.F.R. § 1208, Subpart B. To pursue redress for a USERRA violation, you may either file a USERRA complaint with the Department of Labor (DOL) or file an appeal with the Board. However, if you first file a USERRA complaint with DOL, you must exhaust DOL procedures before you may file an appeal with the Board. *See* 5 C.F.R. § 1208.11.

VEOA Appeals. A VEOA appeal is one in which a preference eligible (defined in 5 U.S.C. § 2108) or veteran described in 38 U.S.C. § 3304(f)(1) alleges that a federal agency violated his or her rights under any statute or regulation relating to veterans' preference. *See* 5 C.F.R § 1208, Subpart C. Unless you are making a VEOA claim in an otherwise appealable action, you must file a VEOA complaint with DOL and allow DOL at least 60 days to try to resolve the matter before filing an appeal with the Board.

Time limits for filing IRA, USERRA, and VEOA Appeals

IRA Appeals. If you are filing an IRA appeal, you must file no later than **65 days** after the date of the Office of Special Counsel (OSC) notice advising you that the Special Counsel will not seek corrective action, or within **60 days** after the date you received the OSC notice, whichever is later. *See* 5 C.F.R § 1209.5.

USERRA Appeals. If you are filing a USERRA appeal, there is no time limit for filing. *See* 5 C.F.R. § 1208.12. If you file a USERRA complaint with the Department of Labor (DOL) first, you must exhaust the procedures of DOL before you may file an appeal with the Board.

VEOA Appeals. If you are filing a VEOA appeal, you must file it within **15 days** after the date you received notice that the Department of Labor (DOL) was unable to resolve the matter. *See* 5 C.F.R. § 1208.22. Note: Before filing with the Board, you must file a VEOA complaint with the DOL, and they are allowed at least **60 days** to try to resolve the matter.

Appendix B

Atlanta Regional Office: 401 West Peachtree Street, N.W., 10th floor, Atlanta, GA 30308-3519
Tel No.: (404) 730-2751; Fax No.: (404) 730-2767
Geographic Area: Alabama; Florida; Georgia; Mississippi; South Carolina; and Tennessee.

Central Regional Office: 230 South Dearborn Street, 31st floor, Chicago, IL 60604-1669
Tel No.: (312) 353-2923; Fax No.: (312) 886-4231
Geographic Area: Illinois; Indiana; Iowa; Kansas City, Kansas; Kentucky; Michigan; Minnesota; Missouri; Ohio; and Wisconsin.

Dallas Regional Office: 1100 Commerce Street, Room 620, Dallas, TX 75242-9979
Tel. No.: (214) 767-0555; Fax No.: (214) 767-0102
Geographic Area: Arkansas; Louisiana; Oklahoma; and Texas.

Denver Field Office: 165 South Union Blvd., Suite 318, Lakewood, CO 80228-2009
Tel. No.: (303) 969-5101; Fax No.: (303) 969-5109
Geographic Area: Arizona; Colorado; Kansas (except Kansas City); Montana; Nebraska; New Mexico; North Dakota; South Dakota; Utah; and Wyoming.

New York Field Office: 26 Federal Plaza, Room 3137-A, New York, NY 10278-0022
Tel. No.: (212) 264-9372; Fax No.: (212) 264-1417
Geographic Area: New Jersey counties of Bergen, Essex, Hudson, and Union; New York; Puerto Rico; and Virgin Islands.

Northeastern Regional Office: 1601 Market Street, Suite 1700, Philadelphia, PA 19103
Tel. No.: (215) 597-9960; Fax No.: (215) 597-3456
Geographic Area: Connecticut; Delaware; Maine; Maryland (except the counties of Montgomery and Prince George's) Massachusetts; New Hampshire; New Jersey (except the counties of Bergen, Essex, Hudson, and Union); Pennsylvania; Rhode Island; Vermont; and West Virginia.

Washington Regional Office: 1800 Diagonal Road, Alexandria, VA 22314-2840
Tel. No.: (703) 756-6250; Fax No.: (703) 756-7112
Geographic Area: Maryland counties of Montgomery and Prince George's; North Carolina; Virginia; Washington, DC; and all overseas areas not otherwise covered.

Western Regional Office: 201 Mission Street, Suite 2310, San Francisco, CA 94105-1831
Tel. No.: (415) 904-6772; Fax No.: (415) 904-0580
Geographic Area: Alaska; California; Hawaii; Idaho; Nevada; Oregon; Washington; and Pacific overseas.