



MERIT SYSTEMS PROTECTION BOARD

APPEAL FORMS PACKAGE (MSPB FORM 185)

INSTRUCTIONS FOR COMPLETING YOUR APPEAL

GENERAL: The forms in this package are intended to help you provide the Board with the information we need to process your appeal. We need this information to help us determine whether the Board has jurisdiction over your appeal, whether it has been filed within the applicable time limit, and what claims you are raising. You do not have to use these forms to file an appeal with the Board. However, if you do not, your appeal must still comply with the Board's regulations. **See 5 CFR Parts 1201, 1208, and 1209.** The Board will expect you to become familiar with these regulations, which are available in MSPB offices, agency personnel offices, agency libraries, and most public libraries.

WHAT FORMS TO COMPLETE: You may use the forms in this package for any of the following matters over which the Board has jurisdiction:

- An appeal of a Federal agency personnel action or decision that is appealable to the Board under a law, rule, or regulation;
- An appeal of an administrative decision or action by the Office of Personnel Management (OPM) or a Federal agency affecting your retirement rights or benefits; or
- An appeal authorized by the Whistleblower Protection Act (WPA), the Uniformed Services Employment and Reemployment Rights Act (USERRA), or the Veterans Employment Opportunities Act (VEOA).

The forms in this package that you must complete depend on the kind of matter you are appealing and the claims you are raising. **Please submit only the forms needed for your appeal.**

All Appeals: You must complete **MSPB Form 185-1** regardless of the matter you are appealing. Then, complete your appeal by attaching the appropriate completed form or forms, as described in the following paragraphs.

Personnel Action Appeals: If you are appealing an agency personnel action or decision, complete and attach **MSPB Form 185-2**. **See 5 CFR 1201.24(a).**

Retirement Appeals: If you are appealing an administrative decision or action affecting your retirement rights or benefits, complete and attach **MSPB Form 185-3**. **See 5 CFR 1201.24(a).**

Other Claims: If you are raising **other claims** in connection with the action or decision for which you completed MSPB Form 185-2 or MSPB Form 185-3, complete and attach the appropriate form(s) for the claim(s), as follows: **MSPB Form 185-4A** for a claim that the agency made mistakes in required procedures or committed violations of law (other than violations for which a specific form is provided); **MSPB Form 185-4B** for a claim that the action or decision was the result of prohibited discrimination; **MSPB Form 185-4C** for a claim that the action or decision was the result of a prohibited personnel practice; or the appropriate form described in the following paragraphs for a claim that the action or decision was based on whistleblowing, that it was a violation of USERRA, or that it violated a law or regulation relating to veterans' preference. **You are responsible for proving each claim you raise. See 5 CFR 1201.24(b) and 1201.56(b).**

Whistleblower Claims or Individual Right of Action (IRA) Appeals under the WPA: If you are claiming—in connection with an appealed action or decision—that the action or decision was based on **whistleblowing**, OR if you are filing an **IRA Appeal under the WPA**, complete and attach **MSPB Form 185-5**. If you are requesting a **stay** of the agency action, also complete and attach **MSPB Form 185-6**. **See 5 CFR 1209.6 and 1209.9.**

Claims of USERRA Violations or USERRA Appeals: If you are claiming—in connection with an appealed action or decision—that the agency violated your rights under **USERRA**, including a claim of discrimination based on service in a uniformed service, OR if you are filing a **USERRA Appeal**, complete and attach **MSPB Form 185-7**. **See 5 CFR 1208.13.**

Veterans' Preference Claims or VEOA Appeals: If you are claiming—in connection with an appealed action or decision—that the agency violated a law or regulation relating to **veterans' preference**, OR if you are filing a **VEOA Appeal**, complete and attach **MSPB Form 185-8**. **See 5 CFR 1208.23.**

See the instructions on these forms for additional information on how to complete them.

Note: The Board's website—www.mspb.gov—contains electronic versions of these forms, addresses and telephone numbers of the MSPB regional and field offices, the Board's regulations, and additional information that explains the Board's practices and procedures.

WHERE TO FILE AN APPEAL: You must file your appeal with the Board's **regional or field office** that is responsible for the geographic area where your duty station was located at the time the agency took the action you are appealing. 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 that is responsible for the geographic area where you live. **See 5 CFR Part 1201, Appendix II, 5 CFR 1201.4(d), and 5 CFR 1201.22(a).** If you have any questions, please contact the regional or field office with which you will file your appeal.

WHEN TO FILE AN APPEAL: Unless your appeal is covered by a law that sets a different filing time limit, you must file your appeal during the period that **begins on the day after the effective date**, if any, of the action you are appealing. (You may not file your appeal **before** the effective date of the action.) The filing period **ends on the 30th calendar day after the effective date, or on the 30th calendar day after the date you received the agency's decision, whichever is later.** If your appeal is late, it may be dismissed as untimely.

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 (ADR) process** before you file an appeal. If you and the agency reach such an agreement, you have an additional 30 calendar days—for a total of **60 calendar days**—to file your appeal with the Board if you are unable to resolve the dispute through the ADR process. This extension of the time for filing does not apply to appeals that are subject to a filing time limit established by law. **See 5 CFR 1201.22(b) and (c).**

If you are filing a **whistleblower appeal** after first filing a complaint with the Office of Special Counsel (OSC), you must file your appeal within **65 days** of the date of the 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 CFR 1209.5.**

If you are filing a **USERRA appeal**, there is **no time limit** for filing. **See 5 CFR 1208.12.** However, you should file your appeal as soon as possible after you become aware of the alleged violation. If you file a USERRA complaint with the Secretary of Labor first, you must exhaust the procedures of the Department of Labor before you may file an appeal with the Board.

If you are filing a **VEOA appeal**, you must file it **within 15 days** after the date you received notice that the Secretary of Labor was unable to resolve the matter. **See 5 CFR 1208.22. Note: Before filing with the Board, you must file a VEOA complaint with the Secretary of Labor, and the Secretary is allowed at least 60 days to try to resolve the matter.**

In all of the above instances, the date of filing is the date your appeal is postmarked, the date of the facsimile transmission, the date it is delivered to a commercial overnight delivery service, or the date of receipt in the regional or field office if you personally deliver it.

HOW TO FILE AN APPEAL: You may file your appeal by mail, by facsimile, by commercial overnight delivery, or by personal delivery. **See 5 CFR 1201.22(d).**

You must submit **an original and one copy** of both your appeal **and** all attachments. You may supplement your response to any question on a separate sheet of paper, but if you do, please put your name and address at the top of each additional page. All of your submissions must be legible and on 8 1/2" x 11" paper. **Please submit only the attachments requested in these forms.** You will have an opportunity to submit other documentary evidence later in the proceeding.

Your appeal must contain your signature in question 14 of MSPB Form 185-1. If it does not, your appeal will be rejected and returned to you. If you want someone to represent you in your appeal, you must complete and attach **MSPB Form 185-9, Designation of Representative Form**, and **you and your representative must BOTH sign it.**

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 1 hour, with an average of 30 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 Financial and Administrative Management, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419.*