OMB NO. 3124-0009

MERIT SYSTEMS PROTECTION BOARD

APPEAL FORM

INSTRUCTIONS

GENERAL: You do not have to use this form to file an appeal with the Board. However, if you do not, your appeal must still comply with the Board's regulations. See **5 C.F.R. Parts 1201, 1208, and 1209**. Your agency's personnel office will give you access to the regulations, and the Board will expect you to be familiar with them. You also should become familiar with the Board's key case law and controlling court decisions as they may affect your case. Complete **Parts I, II, III and V** of this form **regardless of the kind of action** you are appealing. Complete **Part VI** only if you are appealing an action resulting from a **reduction in force**. You must tell the Board if you are raising an **affirmative defense** (see **Part IV**), and **you are responsible for proving each defense you raise.** If you believe the action you are appealing was threatened, proposed, taken, or not taken because of **whistleblowing activities**, you must complete **Part VII.** If you are requesting a **stay,** you must complete **Part VIII.** If you claim a violation of your rights under the **Uniformed Services Employment and Reemployment Rights Act (USERRA)** or the **Veterans Employment Opportunities Act (VEOA)**, you must provide the information required by the Board's regulations at **5 C.F.R. 1208.13 (for USERRA appeals)** or **5 C.F.R. 1208.23 (for VEOA appeals)**. You may use a separate sheet of paper (please put your name and address at the top of each additional page) or you may include the information in block 31 of Part IV.

WHERE TO FILE AN APPEAL: You must file your appeal with the Board's regional or field office which has responsibility for the geographic area where your duty station was located when the agency took the action or, if you are appealing a retirement or suitability decision, the geographic area where you live. See 5 C.F.R. Part 1201, Appendix II, and 5 C.F.R. 1201.4(d).

WHEN TO FILE AN APPEAL: Unless your appeal is covered by a law that sets a different filing time limit, your appeal must be filed during the period **beginning with the day after the effective date**, if any, of the action you are appealing and ending **on the 30th day after the effective date,** or **within 30 days after the date you receive the agency's decision, whichever is later**. However, 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, you have an additional 30 days—for a total of **60 days**—to file your appeal. You may not file your appeal before the effective date of the action you are appealing. If your appeal is late, it may be dismissed as untimely. If you are filing a **USERRA appeal**, there is **no time limit** for filing (see 5 CFR 1208.12). You may not file a **VEOA appeal** with the Board unless you first filed a complaint with the Secretary of Labor and allowed the Secretary at least 60 days to try to resolve the matter; any subsequent appeal to the Board must be filed within **15 days** of the date you receive notice that the Secretary has been unable to resolve the matter (see 5 C.F.R. 1208.22). If you are filing a **whistleblower appeal** after first filing a complaint with the Office of Special Counsel (OSC), your appeal must be filed 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 receive the OSC notice, whichever is later (see 5 C.F.R. 1209.5). 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 if you personally deliver it to the regional or field office.

HOW TO FILE AN APPEAL: You may file your appeal by mail, by facsimile, by commercial overnight delivery, or by personal delivery. You must submit **two** copies of both your appeal **and** all attachments. You may supplement your response to any question on separate sheets 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. **Your appeal must contain your or your representative's signature in block 6. If it does not, your appeal will be rejected and returned to you. If your representative signs block 6, you must sign block 11 or submit a separate written designation of representative.**

Part I Appellant Identification

1. Name *(last, first, middle initial)*	2. Social Security Number
3. Present address *(number and street, city, state, and ZIP code)* **You must notify the Board of any change of address or telephone number while the appeal is pending with MSPB.**	4. Home phone *(include area code)* 5. Office phone *(include area code)*
6. I certify that all of the statements made in this appeal are true, complete, and correct to the best of my knowledge and belief.	**Signature of appellant or designated representative** Date signed

Part II Designation of Representative

7. You may represent yourself in this appeal, or you may choose someone to represent you. Your representative does not have to be an attorney. You may change your designation of a representative at a later date, if you so desire, but **you must notify the Board promptly of any change**. Where circumstances require, a separate designation of representative may be submitted after the original filing. Include the information requested in blocks 7 through 11.

"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."

8. Representative's address *(number and street, city, state, and ZIP code)*.	9. Representative's employer
	10.a) Representative's telephone number *(include area code)*
	10.b) Representative's facsimile number
	11. **Appellant's signature** Date

Part III Appealed Action

12. Briefly describe the **agency action** you wish to appeal and attach the proposal letter and decision letter. If you are appealing a decision relating to the denial of retirement benefits, attach a copy of OPM's **reconsideration decision**. If the relevant SF-50 or its equivalent is available, send it now; however, do NOT delay filing your appeal because of it. You may submit the SF-50 when it becomes available. Later in the proceeding, you will be afforded an opportunity to submit detailed evidence in support of your appeal.

13. Name and address of the agency that took the action you are appealing *(including bureau or other divisions, as well as street address, city, state and ZIP code)*		14. Your position title and duty station at the time of the action appealed
15. Grade at time of the action appealed	16. Salary at the time of the action appealed $ per	17. Are you a veteran and/or entitled to the employment rights of a veteran? ☐ *Yes* ☐ *No*
18. Employment status at the time of the action appealed ☐ *Temporary* ☐ *Applicant* ☐ *Retired* ☐ *Permanent* ☐ *Term* ☐ *Seasonal*	19. If retired, date of retirement *(month, day, year)*	20. Type of service ☐ *Competitive* ☐ *SES* ☐ *Excepted* ☐ *Postal Service* ☐ *Foreign Service*
21. Length of government service	22. Length of service with acting agency	23. Were you serving a probationary or trial period at the time of the action appealed? ☐ *Yes* ☐ *No*
24. Date you received written notice of the proposed action *(month, day, year) (attach a copy)*	25. Date you received the final decision notice *(month, day, year) (attach a copy)*	26. Effective date of the action appealed *(month, day, year)*

27. Explain briefly why you think the agency was wrong in taking this action.

28. Do you believe the penalty imposed by the agency was too harsh?

☐ *Yes* ☐ *No*

29. What action would you like the Board to take on this case (i.e., what remedy are you asking for)?

Part IV Appellant's Defenses

30.a) Do you believe the agency committed harmful procedural error(s)?

☐ *Yes* ☐ *No*

30.b) If so, what is (are) the error(s)?

30.c) Explain how you were harmed by the error(s).

Block 31 - Violations of Law: If you use this block to claim a violation of your rights under USERRA or VEOA, you must include the information required by the Board's regulations at 5 C.F.R. 1208.13 (for USERRA appeals) or 5 C.F.R. 1208.23 (for VEOA appeals). DO NOT use this block to claim a violation of the Whistleblower Protection Act; instead, complete Part VII and, if you are also requesting a stay, Part VIII.

31.a) Do you believe that the action you are appealing violated the law?

☐ *Yes* ☐ *No*

31.b) If so, what law?

31.c) How was it violated?

32.a) If you believe you were discriminated against by the agency, **in connection with the matter appealed**, because of your race, color, religion, sex, national origin, marital status, political affiliation, disability, or age, indicate so and explain why you believe it to be true.

32.b) Have you filed a **formal** discrimination complaint with your agency or any other agency concerning the matter which you are seeking to appeal? ☐ *Yes (attach a copy)* ☐ *No*

32.c) If yes, place filed *(agency, number and street, city, state, and ZIP code)*

32.d) Date filed *(month, day, year)*

32.e) Has a decision been issued?

☐ *Yes (attach a copy)* ☐ *No*

33.a) Have you, or anyone in your behalf, filed a formal grievance with your agency concerning this matter, under a negotiated grievance procedure provided by a collective bargaining agreement? ☐ *Yes (attach a copy)* ☐ *No*	33.b) Date filed *(month, day, year)*
33.c) If yes, place filed *(agency, number and street, city, state, and ZIP code)*	33.d) Has a decision been issued? ☐ *Yes (attach a copy)* ☐ *No* 33.e) If yes, date issued *(month, day, year)*

Part V Hearing

34. You may have a right to a hearing on this appeal. If you do not want a hearing, the Board will make its decision on the basis of the documents you and the agency submit, after providing you and the agency with an opportunity to submit additional documents.

Do you want a hearing? ☐ *Yes* ☐ *No*

If you choose to have a hearing, the Board will notify you where and when it is to be held.

Part VI Reduction In Force

INSTRUCTIONS

Fill out this part only if you are appealing from a Reduction in Force. Your agency's personnel office can furnish you with most of the information requested below.

35. Retention group and sub-group	36. Service computation date	37.a) Has your agency offered you another position rather than separating you? ☐ *Yes* ☐ *No*
37.b) Title of position offered	37.c) Grade of position offered	37.d) Salary of position offered $ per
37.e) Location of position offered		37.f) Did you accept this position? ☐ *Yes* ☐ *No*

38. Explain why you think you should not have been affected by the Reduction In Force. *(Explanations could include: you were placed in the wrong retention group or sub-group; an error was made in the computation of your service computation date; competitive area was too narrow; improperly reached for separation from competitive level; an exception was made to the regular order of selection; the required number of days notice was not given; you believe you have assignment [bump or retreat] rights; or any other reasons. Please provide as much information as possible regarding each reason.)*

Part VII Whistleblowing Activity

INSTRUCTIONS

Complete Parts VII and VIII of this form only if you believe the action you are appealing is based on whistleblowing activities. If you filed a complaint with the Office of Special Counsel (OSC) using Form OSC-11 (8/00) before filing this appeal, you may attach a copy of Part 2, Reprisal for Whistleblowing, of the OSC form together with any continuation sheet or supplement filed with OSC. This will give the Board the information requested in blocks 39(a) through (c) below. Please complete the other blocks in this part even if you attach Form OSC-11.

39.a) Have you disclosed information that evidences a violation of any law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety?

☐ *Yes (attach a copy or summary of disclosure)* ☐ *No*

39.b) If yes, provide the name, title, and office address of the person to whom the disclosure was made

39.c) Date the disclosure was made *(month, day, year)*

40. If you believe the action you are appealing was... *(please check appropriate box)*

☐ *Threatened* ☐ *Proposed* ☐ *Taken* ☐ *Not Taken*

...because of a disclosure evidencing a violation of any law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, provide:

a) a chronology of facts concerning the action appealed; and

b) explain why you believe the action was based on whistleblowing activity and attach a copy of any documentary evidence

41. a) Have you sought corrective action from the Office of Special Counsel concerning the action which you are appealing?

☐ *Yes (attach a copy of your request to the Office of Special Counsel for corrective action)* ☐ *No*

41.b) If yes, date(s) filed *(month, day, year)*

41. c) Place filed *(location, number and street, city, state, and ZIP code)*

42. Have you received a written notice of your right to file this appeal from the Office of Special Counsel?

☐ *Yes (attach a copy)* ☐ *No*

43.a) Have you already requested a stay from the Board of the action you are seeking to appeal? ☐ *Yes (attach a copy)* ☐ *No*	43.b) If yes, date requested *(month, day, year)*
43.c) Place filed *(location, number and street, city, state, and ZIP code)*	43.d) Has there been a decision? ☐ *Yes (attach a copy)* ☐ *No*

Part VIII Stay Request

INSTRUCTIONS

You may request a stay of a personnel action allegedly based on whistleblowing at any time after you become eligible to file an appeal with the Board under 5 C.F.R. 1209.5, but no later than the time limit set for the close of discovery in the appeal. The stay request may be filed prior to, simultaneous with, or after the filing of an appeal. When you file a stay request with the Board, you must simultaneously serve it upon the agency's local servicing personnel office or the agency's designated representative. 5 C.F.R 1209.8.

If your stay request is being filed prior to filing an appeal with the Board, you must complete Parts I and II and items 41 through 43 above.

44. On separate sheets of paper, please provide the following. Please put your name and address at the top of each page.

a. A chronology of facts, including a description of the disclosure and the action taken by the agency (unless you have already supplied this information in Part VII above).

b. Evidence and/or argument demonstrating that the:

(1) action threatened, proposed, taken, or not taken is a personnel action, as defined in 5 C.F.R. 1209.4(a); and

(2) action complained of was based on whistleblowing, as defined in 5 C.F.R. 1209.4(b) (unless you have already supplied this information in Part VII above).

c. Evidence and/or argument demonstrating that there is a substantial likelihood that you will prevail on the merits of your appeal of the personnel action.

d. Documentary evidence that supports your stay request.

e. Evidence and/or argument addressing how long the stay should remain in effect.

f. Certificate of service specifying how and when the stay request was served on the agency.

g. You **may** provide evidence and/or argument concerning whether a stay would impose extreme hardship on the agency.

Privacy Act Statement: *This form requests personal information which 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. Since 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.*

The Merit Systems Protection Board is authorized under provisions of Executive Order 9397, dated November 22, 1943, to request your Social Security number, but providing your Social Security number is voluntary and failure to provide it will not result in the rejection of your appeal. Your Social Security number will only be used for identification purposes in the processing 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 data base 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 Financial and Administrative Management, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419.*