U.S. Merit Systems Protection Board
Information Sheet: Initial Appeals Process
Updated 9/3/2026

Purpose

The purpose of this information sheet is to provide general guidance and background information. It does not represent an official statement approved by the Board itself and is not intended to provide legal counsel or to be cited as legal authority. Instead, it is intended only to help the public become familiar with the MSPB and its procedures. In all instances, however, the Board's regulations and current case law control with respect to the matters discussed here.

What does the Board do after an appeal is received?

The appeal is docketed and assigned to an AJ for adjudication. The AJ issues an Acknowledgment Order that lets you know the Board has received your appeal and orders the agency to file a response to the appeal.

What is in the Acknowledgment Order?

Read the Acknowledgment Order carefully because it contains important information about timeliness or jurisdiction (if apparent from the appeal), requesting a hearing, designation of a representative, settlement, discovery, motions and responses to motions, general instructions about filing pleadings before the Board, the need for a certificate of service for every pleading you file with the Board, and a citation to the Board's regulations. For agencies, there is also a Schedule that instructs the agency how to compile its response to the appeal. There are also deadlines in the Order with which both parties must comply. The Board's policy is to adjudicate cases in 120 days or less so it is important that you comply with the deadlines.

What if the Acknowledgment Order contains a timeliness or jurisdictional section?

If it is apparent from your appeal that your appeal may have been untimely filed or that the Board may not have jurisdiction (authority to hear your appeal), the Acknowledgment Order will contain a section called "Timeliness" or "Jurisdiction." Those sections will specifically identify the jurisdictional or timeliness issue in your appeal and notify you that you have the burden of proof on those issues. Read those sections carefully and timely respond to the Order.

What if the agency files a motion or sends you a request for discovery?

You must file a response or opposition to any motion within 10 calendar days of the date on the Certificate of Service. You must respond or object to discovery within

20 days of the date on the Certificate of Service. See the Information Sheets on motions practice and discovery for more information.

What if I need more time?

If you have a good reason to request an extension of time, you may file a written request called a "Motion for Extension of Time." First, ask the opposing party if it will oppose your motion and include in your motion a statement of the response you receive. You must explain the reason(s) for your request and the amount of time you believe you need. In some situations, where there is a need for lengthy discovery or for other reasons, the Judge may suspend the processing of the appeal for up to 30 days, and may suspend it a second time for another 30 if the need arises. *See* 5 C.F.R. § 1201.28.

If I requested a decision on the written record and the Board has jurisdiction, what happens next?

The AJ will issue a Close of Record Order which sets a deadline for the parties' final submissions to the Board. That Order also notifies you of the date and time of a telephonic status conference with both parties.

If I requested a hearing, my appeal was timely filed, and the Board has jurisdiction, what happens next?

The AJ will issue an Order and Notice of Hearing and Prehearing Conference which notifies you of the date for filing prehearing submissions, the date and time of the prehearing conference, and the date, time and location of the hearing. Sometimes that Order also schedules a status conference. Read that Order carefully, as it contains important information, such as information about requesting witnesses and what you must show to prove that their testimony should be heard, what to include in your prehearing submission, and deadlines and scheduled times with which you must comply. In some cases, hearings may be conducted by telephone, and in others, by videoconferencing, or in person. In-person hearings are usually conducted at fixed hearing sites referenced in the section of "The Appeal Process" called "Approved Hearing Sites" on the MSPB's website.

What happens at a close of record status conference or a prehearing conference?

During both conferences, you will be notified of the burdens of proof and the issues in the case, and settlement, discovery, and any other relevant matters may be discussed. If you have questions or do not understand something discussed during the conference, ask the AJ to explain it. In the close of record status conference, you will also be notified of what you can send to the Board in your

final submission (documentary and testimonial evidence and closing argument). In the prehearing conference, the AJ will also rule upon the admissibility of witnesses and exhibits and discuss what will happen at the hearing.

What happens at a hearing?

Wear appropriate dress (business casual at a minimum). The party with the burden of proof presents its case first through questions presented to witnesses; then, the other party presents its case. Both parties will have an opportunity to question each other's witnesses. After the presentation of evidence, the parties may have the opportunity to present a closing argument, in the discretion of the AJ which is a statement as to why you believe you should win. In most cases, a court reporter is present to record the hearing for the record.

What happens after the hearing?

The AJ may issue a bench decision, which is an oral decision read into the record at the conclusion of the hearing and which is followed up with a written decision. If a bench decision is not issued, the AJ will issue a written decision after the hearing is concluded. All decisions will resolve all relevant issues, will contain an explanation of the AJ's rulings, and will also contain a notice of appeal rights if you are dissatisfied with the AJ's ruling.

What if I have other procedural questions?

(1) Call or email the regional office in which your appeal is pending to ask your question.

(2) Send an email to the Clerk of the Board at mspb@mspb.gov.

(3) Go to the Board's website at www.mspb.gov to read the information contained in "The Appeals Process," to access the Board's regulations at 5 C.F.R. Part 1201 (and Parts 1208 and 1209 if your appeal concerns the types of appeals they cover), and to find lots of other helpful information and links.