U.S. Merit Systems Protection Board

Information Sheet: Stay Request

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 is a stay request?

A stay request is a written request to delay the effective date of a personnel action that is being threatened, proposed, taken or not taken where the employee believes the action is retaliation for his whistleblowing. The Board has no authority to consider a stay request filed by an employee who does not allege retaliation for whistleblowing, so you should be sure that your disclosure meets the legal definition of whistleblowing at 5 U.S.C. § 2302(b)(8). You should also refer to the Board's regulations in 5 C.F.R. Part 1209, Subpart C, for more specific information about stay requests.

When may I file a stay request?

You may request a stay at any time after you become eligible to file an appeal of the action at issue with the Board under 5 C.F.R. § 1209.5, but no later than the deadline for discovery to be completed in the appeal. You may file your request before, with, or after you file an appeal of that action with the Board. The action must constitute a "personnel action" set out at 5 U.S.C. § 2302(a)(2).

Where and how do I file a stay request?

You must file a stay request in the appropriate regional office (5 C.F.R. § 1201.4(d)). You may file it by mail, facsimile, by commercial or personal delivery, or by electronic filing (5 C.F.R. § 1201.14).

Do I have to serve my stay request on the agency?

Yes. This is very important. At the same time you file your stay request with the Board, you must serve a copy of it on the agency's local servicing personnel office or the agency's designated representative, if any. At that time, you must also

submit a Certificate of Service stating how, when, and on whom you served the stay request.

What should a stay request include?

The format you use is not important, but it must include the information set out in 5 C.F.R. § 1209.9(a). You may also include documentary evidence that supports the stay request. Make sure your stay request is complete because, typically within 10 business days after the request is received, the Administrative Judge assigned to decide it will rule on the request based on its contents and the agency's response, if one is filed.

What is the standard for determining whether a stay will be granted?

The AJ must decide whether there is a substantial likelihood that you will prevail on the merits of your appeal and whether the stay would result in extreme hardship to the agency.

Does the agency have a chance to respond to the stay request and, if so, what must the response contain?

Yes, the agency may respond to the stay request, and it must include the information set out in 5 C.F.R. § 1209.9(b). The Board must receive the agency's response within 5 business days of the date of the Certificate of Service of the stay request.

Am I entitled to a hearing on a stay request?

The AJ may hold a hearing on the stay request, but in most cases, the request will be decided based on the request and the agency's response.

How long will a stay, if granted, remain in effect?

If the AJ grants a stay, he will issue an Order which must specify the effective date and length of the stay. A stay remains in effect for the time specified by the AJ, until the Board issues a final decision on the appeal of the stayed underlying personnel action, or until the Board vacates or modifies the stay (whichever occurs first). An agency must comply immediately with any Order that grants a stay. The parties can seek review of an Order on a stay request only after the AJ rules on the appeal of the underlying personnel action.

What if I have other procedural questions?

(1) Call or email the regional office in which your appeal is pending and 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," access the Board's regulations in 5 C.F.R. Part 1201, and find lots of other helpful information and links.