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Merit Systems Protection Board Basics

Most federal employees have rights before the Merit Systems Protection Board (MSPB) relating to removals (terminations), suspensions of over 14 days, whistleblower allegations, denial of within grade increases, reductions in grade, and various other personnel actions. Unlike the Equal Employment Opportunity Commission (EEOC), which has jurisdiction limited to allegations of discrimination, the MSPB can hear claims involving a personnel action in which discrimination is alleged (referred to as a mixed case).

Jurisdiction

The MSPB is an administrative court that has original and appellate jurisdiction. In order to hear your claim, the MSPB must have jurisdiction. 5 CFR 1201 sets forth the scope of MSPB jurisdiction. The majority of claims relating to personnel actions that are filed before the MSPB are “appeals,” which challenge a removal or suspension of more than 14 days. The MSPB also has “original” jurisdiction over actions brought by the Office of Special Counsel, removals from Senior Executive Service for performance deficiencies, and certain actions taken against administrative law judges. Unlike the Equal Employment Opportunity Commission (EEOC), which is limited to hearing allegations of discrimination, the MSPB can hear claims it has jurisdiction over in which discrimination is alleged (referred to as a mixed case).

When filing with the MSPB

Depending on the type of claim and the issues, there are different time periods for filing with the MSPB. However, appeals generally must be filed within 30 days of the action at issue or within 30 days of the agency’s decision, whichever is later. When you file your appeal, include all requested information and file in a timely manner with the correct MSPB location, which is usually the MSPB office covering the area where your duty station is/was located. In your appeal, you should also include information about any affirmative defenses (such as allegations of discrimination, retaliation, or harmful procedural error) and make clear that you want a hearing. Although you are not required to request a hearing, in most cases it is worthwhile to request one, even if you later withdraw your request.

Considerations in preparing for hearing

Once you have filed your case with the MSPB, it will be assigned to an administrative judge. In most cases, you will be permitted to conduct depositions and engage in discovery in which you can serve interrogatories, requests for production of documents, and requests for admission.

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There are deadlines associated with filing and responding to discovery requests. You should strictly adhere to all case processing deadlines, including discovery deadlines.

Your strategy in discovery will depend on the allegations you are raising and specifics of your case. Generally, you will want to obtain evidence in discovery to support your appeal, discredit the agency's reason(s) for its actions, and establish your affirmative defenses. Once you have obtained the evidence, it is important to prepare to present it at hearing in a manner that will be most persuasive based on the applicable law and facts of your case.

Conclusion

The MSPB can exercise jurisdiction over limited types of claims and issues. In addition to knowing the statutory limits on jurisdiction and deadlines in your case, it is crucial to properly develop the evidence that you need to prevail. Should you have a case before the MSPB, you should consider contacting an attorney who is experienced in this type of practice.

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