



An overview of the Merit Systems Protection Board appeals process for terminated federal employees

This document serves as a general overview of the appeals process for federal employees that have been terminated through a Federal Reduction In Force (RIF). It should be noted that while these guidelines are provided to aid in understanding of the appeals process, they should not be considered legal advice. The appeals process has been designed such that terminated employees may be able to navigate the process independently, and this overview serves to aid in that independent engagement with an appeal. However, to some, this process may still feel overwhelming and confusing, even with this overview provided. In this case, it is both appropriate and encouraged to seek out legal council, particularly those specializing in MSPB appeals, if you feel that your rights as a federal employee have been violated.

It should be noted that appeals must be submitted within 30 days of the relevant RIF to be considered valid.

Appellate Jurisdiction of the Merit Systems Protection Board (MSPB)

- Pursuant to [5 CFR Section 1201.3](#), the MSPB has appellate jurisdiction over Reductions in Force. Employees covered by collective bargaining agreements (CBA) cannot appeal to both the MSPB and through the grievance procedures outlined in the CBA. Employees navigating this decision should consult with legal counsel as the specifics of any case may influence the most desirable route.
- Those with concerns they have been discriminated against in violation of Title VII of the Civil Rights Act of 1964 should consult legal counsel to determine appropriate avenue for relief.

Timeline for Appeal

- Appeal to MSPB must be within 30 days after the effective date, if any, of the action being appealed. That is, if an employee receives a notice that is effective

on April 1, 2025, the 30-day timeframe begins on April 1, 2025. The 30-day window would close on May 1, 2025.

Appeal Filing Instructions

- Appeals are submitted to the MSPB's electronic filing portal or by mail. With a timestamp provided immediately upon electronic submission, this is the more expeditious option. Please visit the MSPB's e-appeal information hub: <https://www.mspb.gov/e-Appeal/index.htm>
- Formatting Guidance for Electronic Pleadings:
 - (1) ***Electronic formats allowed.*** E-Appeal accepts numerous electronic formats, including word-processing and spreadsheet formats, Portable Document Format (PDF), and image files (files created by scanning). A list of formats allowed is set forth in e-Appeal policies posted to the MSPB's website. Pleadings filed via e-Appeal must be formatted so that they will print on 8 1/2-inch by 11-inch paper in portrait orientation. Parties are responsible for reviewing all pleadings to confirm legibility and to minimize the inclusion of nonrelevant personally identifiable information. A Microsoft word document under standard preferences is in compliance with these requirements.
 - (2) ***Requirements for pleadings with electronic attachments.*** An e-filer who uploads supporting documents, in addition to the document that constitutes the primary pleading, must identify each attachment, either by bookmarking the document using e-Appeal, or by uploading the supporting documents in the form of one or more PDF files in which each attachment is bookmarked. Bookmark names must comply with the naming conventions set forth in e-Appeal policies posted to the MSPB's website and include information such as a brief descriptive label with dates (e.g., "Oct. 1, 2021—Decision Notice"). Files uploaded as a part of the appeal without the correct naming conventions may not be considered in the appeals process, so pay careful attention to your file names as outlined above and in the e-Appeal policy.
 - (3) ***Submission of audio and video evidence.*** Audio and video evidence must be submitted according to the formatting and submission requirements set forth in e-Appeal policies posted to the MSPB's website.

Appeal Form and Contents:

- Appeals are filed utilizing the following form: <https://www.mspb.gov/appeals/forms/FORM185-Final-508-9-20-23.pdf>

- Appeals can be submitted in any format, including letter format. They can be combined into a single word document, but they **must** include the following information:

(1) The name, address, telephone number, and email address of the appellant, and the name and address of the agency that took the action;

(2) A description of the action the agency took and its effective date;

(3) A request for hearing if the appellant wants one (note that an employee has the right to have a hearing);

(4) A statement of the reasons why the appellant believes the agency action is wrong (this can include that the agency did not follow appropriate federal RIF procedures – bear in mind that following RIF procedure is law!);

(5) A statement of the action the appellant would like the judge to order. For example, an appellant could specifically indicate an interest in being reinstated in their position as a remedy for unlawful termination with back pay provided;

(6) The name, address, telephone number, and email address of the appellant's representative (eg. Attorney), if the appellant has a representative;

(7) Where applicable, a copy of the notice of proposed action, the agency decision being appealed and, if available, the SF-50 or similar notice of personnel action. If applicable, attach the termination/RIF notification and any other notice of personnel action that you received. Please note that the agency will be asked to submit documentation as well and there will be subsequent opportunities to submit information and evidence after the filing date.

IMPORTANT: An appellant should not miss the deadline for filing merely because he or she does not currently have all of the documents specified in this section.

(8) A statement telling whether the appellant or anyone acting on his or her behalf has filed a grievance or a formal discrimination complaint with any agency regarding this matter; and

(9) The signature of the appellant or, if the appellant has a representative, of the representative. If the appeal is electronically filed, compliance with [§ 1201.14](#) and the directions at e-Appeal satisfy the signature requirement.

- Additional documentation to support the appeal includes:

Performance evaluations (Which could include PMAP or COER records) ;
eOPF records;
Disciplinary action;

Written communications between employee and employer;
Witness statements/affidavits from coworkers related to the complaint.

Disposition of the Appeal:

- Before the decision on the appeal by the Administrative Judge, procedural steps such as pre-hearing conferences, motions, and potential settlement discussions will occur. This is outlined in more detail here: [5 CFR 1201](#).
- Appellant may wish to have a hearing on the appeal or to waive their right to a hearing. For those that waive their right to a hearing, the determination of the Administrative Judge will be based on an administrative review of the information. Depending on the details of the case, the decision to wave their right to a hearing may be a strategic one that can be discussed with legal counsel.
- If two or more parties appeals contain identical or similar issues, consolidation can occur. This is triggered by a motion of a party or by a judge's own motion. An example provided in the CFR is when there are individual appeals rising from a single RIF. (See 5 CFR 1201.36).

Judge's Decision

The judge will render an initial decision after the record closes (i.e. typically at the close of the hearing or, if the hearing is waived, the date the judge sets as the final date for submissions by the parties for consideration). This initial decision will include: the judge's findings/decision based on the issues presented, a rationale for the finding/decision, an order making the decision final and addressing any relief that is appropriate based on the finding, the date which the decision will become final (35 days after issuance), and a statement of any further review possible, including a petition for further review, including judicial review, and a motion for damages. For assistance in deciding whether additional review should be sought, please consult legal counsel.

Appeal of MSPB Decision/Judicial Review

Please note that employees may seek to have the decision of the MSPB reviewed in court if they wish to. Determining whether to pursue this option is a topic to be discussed with legal counsel. For general information about this process/option, please see below:

An employee must *exhaust administrative remedies before seeking judicial review*. Once the judge's decision becomes final (35 calendar days after the decision is rendered), the employee may seek review in federal court if they are unsatisfied with the MSPB review findings. This must be filed within 60 days of the date on which the judge's decision became final.

