

## **MSPB Jurisdiction Check-list; Employee Eligibility to File Appeal**

Not every U.S. Postal Service employee is entitled to appeal an employment related-action to the Merit Systems Protection Board ("MSPB"). First, the appeal must concern a certain type of employment action referred to generally as an "adverse action." Such actions include removals, reductions in grade or pay, and constructive suspensions. Proposed removals, letters of warning, short term suspensions, and denials of employment for new hires are not "adverse actions" appealable to the Board.

The right to appeal adverse actions to the MSPB is further limited to certain classes of employees generally comprised of veterans, supervisors, managers, and personnel employees. All appellants must have worked for the USPS for one (1) continuous year in the same or similar line of work. The Board has recently been making an exception to this requirement where non-career employees have been given 3 or more consecutive appointments, with only a few days' break in service.

The Board will dismiss an improperly filed appeal for lack of jurisdiction.

Following is a check-list to be used in determining 1) whether an employee should be advised of their MSPB appeal rights in connection with an adverse employment action; or 2) whether the Board has properly exercised jurisdiction over an appeal filed by an employee.

*(Note: Each employees' PS-Form 50 carries a column entitled "Veterans Preference." This category is instructive, but not decisive of whether an employee can appeal to the MSPB. See Handbook EL-311 Personnel Operations (Postal Bulletin 21971 (5/7/98), pages 15-18.))*

For assistance in determining the military service record for an employee, one should refer to the DD-214 form and the employee's application form. The DD-214 is an official document which specifies dates of military service, badges and medals awarded, and the type of discharge, honorable or otherwise. The DD-214 form is usually obtainable from personnel; the employee's application is usually the first document in the official personnel file.

## **MSPB JURISDICTION CHECKLIST**

A. HAS THE EMPLOYEE WORKED FOR THE USPS FOR ONE (1) CONTINUOUS YEAR IN THE SAME OR SIMILAR POSITION?<sup>i</sup>

☐ If yes, go on to Section B.

☐ If no, no appeal rights attach for adverse actions.

B. IS THE EMPLOYEE A "PREFERENCE ELIGIBLE"?<sup>ii</sup>

1. Did the employee serve active duty in the military and receive an honorable discharge?

☐ If yes, go on to Section B2.

☐ If no, go to Section C.

2. Did the employee serve active duty in the military at any time between and including April 28, 1952 and July 1, 1955 (Korean War).<sup>iii</sup>

☐ If yes, the employee may appeal an adverse action to the MSPB.

☐ If no, continue to Section B3.

3. Did the employee serve active duty in the military for more than 180 consecutive days with only part of that service occurring after January 31, 1955 and before October 15, 1976 (Vietnam War)?<sup>iv</sup>

☐ If yes, the employee may appeal an adverse action to the MSPB.

☐ If no, continue to Section B4.

4. Did the employee serve active duty in the military at any time between and including August 2, 1990 and January 2, 1992 (Desert Storm).

☐ If yes, the employee may appeal an adverse action to the MSPB.

☐ If no, continue to Section B5.

5. Did the employee receive a campaign badge or expeditionary medal as a result of their service in any eligible campaign or expedition for which a badge has been issued?<sup>v</sup> (*See Postal Bulletin 21971 (5/7/98), pages 17-18, exhibit 241.9 for complete listing of eligible campaigns and expeditions*)

☐ If yes, the employee may appeal an adverse action to the MSPB.

☐ If no, the employee is not a “preference eligible”. Continue to Section C.

C. IS THE EMPLOYEE A SUPERVISOR OR MANAGER?<sup>vi</sup>

☐ If yes, the employee may appeal an adverse action to the MSPB.

☐ If no, continue to Section D.

D. IS THE EMPLOYEE A PERSONNEL WORKER WHO IS ENGAGED IN WORK OTHER THAN IN A PURELY  
NON-CONFIDENTIAL, CLERICAL CAPACITY?<sup>vii</sup>

☐ If yes, the employee may appeal an adverse action to the MSPB.

☐ If no, continue to Section E.

E. IS THE EMPLOYEE A DISABLED VETERAN? (MUST BE A SERVICE-RELATED DISABILITY)<sup>viii</sup>

☐ If yes, the employee may appeal an adverse action to the MSPB.

☐ If no, continue to Section F.

F. IS THE EMPLOYEE AN UNMARRIED WIDOW/WIDOWER OF AN EMPLOYEE WHO WOULD QUALIFY UNDER SECTION B  
ABOVE (E.G. HAS SERVED IN A WAR, CAMPAIGN, OR EXPEDITION FOR WHICH A BADGE HAS BEEN AUTHORIZED AND  
WAS HONORABLY DISCHARGED)?<sup>ix</sup>

☐ If yes, the employee may appeal an adverse action to the MSPB.

☐ If no, continue to Section G.

G. IS THE EMPLOYEE THE SPOUSE OF A SERVICE-CONNECTED DISABLED VETERAN IF THE VETERAN HAS BEEN UNABLE  
TO QUALIFY FOR ANY APPOINTMENT IN THE CIVIL SERVICE OR THE D.C. GOVERNMENT?<sup>x</sup>

☐ If yes, the employee may appeal an adverse action to the MSPB.

☐ If no, continue to section H.

H. IS THE EMPLOYEE THE MOTHER OF A VETERAN WHO LOST THEIR LIFE UNDER HONORABLE CONDITIONS WHERE 1)  
HER HUSBAND IS TOTALLY DISABLED, OR 2) SHE IS WIDOWED, DIVORCED OR SEPERATED FROM THE VETERAN’S

FATHER AND HAS NOT REMARRIED, OR 3) SHE HAS REMARRIED, BUT IS WIDOWED DIVORCED OR SEPERATED FROM  
HER HUSBAND DURING THE PERIOD WHEN PREFERENCE IS CLAIMED?<sup>xi</sup>

☐ If yes, the employee may appeal an adverse action to the MSPB.

☐ If no, continue to section I.

I. IS THE EMPLOYEE THE MOTHER OF A SERVICE-CONNECTED PERMANENTLY AND TOTALLY DISABLED VETERAN WHERE  
1) HER HUSBAND IS TOTALLY DISABLED, OR 2) SHE IS WIDOWED, DIVORCED, OR SEPERATED FROM THE VETERAN'S  
FATHER AND HAS NOT REMARRIED, OR 3) SHE HAS REMARRIED, BUT IS WIDOWED, DIVORCED, OR SEPERATED FROM  
HER HUSBAND DURING THE PERIOD WHEN PREFERENCE IS CLAIMED?<sup>xii</sup>

☐ If yes, the employee may appeal an adverse action to the MSPB.

☐ If no, no appeal rights attach.

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<sup>i</sup> 5 USC 7511 (a)(1)(B); 39 USC 1005 (a)(4)(A)(i); 39 USC 1005 (a)(4)(A)(ii)(II)

<sup>ii</sup> 5 USC 7511 (a)(1)(B); 39 USC 1005 (a)(4)(A)(i)

<sup>iii</sup> 5 USC 2108 (1)(A)

<sup>iv</sup> 5 USC 2108 (1)(B)

<sup>v</sup> 5 USC 2108 (1)(A)

<sup>vi</sup> 39 USC (a)(4)(A)(ii)

<sup>vii</sup> 39 USC (a)(4)(A)(ii)

<sup>viii</sup> 5 USC 2108 (2); 5 USC 2108 (3)(C)

<sup>ix</sup> 5 USC 2108 (1)(A); 5 USC 2108 (3)(D)

<sup>x</sup> 5 USC 2108 (3)(E)

<sup>xi</sup> 5 USC 2108 (3)(F)

<sup>xii</sup> 5 USC 2108 (3)(G)