

The Completion and Submission of an MSPB Appeal

Aug 20, 2013

When filing an appeal with the Merit Systems Protection Board (MSPB), a federal employee has a number of steps to complete in order to properly submit his or her MSPB appeal. If these steps are not completed, an appeal (or important portions of the appeal) may not be accepted or considered by the MSPB for review.

MSPB Filing Deadlines

The single most important aspect to filing an MSPB appeal is to do so in a timely manner. The filing of an MSPB appeal starts with the completion of the MSPB Form 185. Generally, the appeal form (and appeal) must be filed within 30 calendar days of the effective date of the action. For example, if an employee receives a final action (e.g., a decision upholding a proposed removal or suspension) effective on June 25, 2013, the filing due date for an appeal would likely be July 25, 2013. If the due date of the appeal falls on a weekend or holiday, the due date will be extended to the next business day.

The key for a federal employee seeking to appeal to the MSPB is to not delay and file the appeal close to the deadline. By doing so, it creates a significant risk that the federal agency may argue that the appeal is untimely and the MSPB will dismiss the appeal. It is far better for a federal employee to file his or her MSPB appeal as far in advance of the deadline as possible to avoid these issues.

Filing With the Correct Regional or Field Office of the MSPB

It is also important to file an MSPB appeal with the correct regional or field office. Presently, there are eight regional or field offices of the MSPB. The offices and their jurisdiction change from time to time, so it is important to check the MSPB website for updated office information. The office for filing a federal employee's MSPB appeal is determined by the federal employee's duty station. For instance, if the employee is employed in Raleigh, North Carolina, the correct office at this time for filing would be the Washington D.C. Regional Office of the MSPB. However, if an employee's duty station is in South Carolina, the correct office at this time for filing would be the Atlanta Regional Office of the MSPB. Before filing an MSPB appeal, verify the correct regional or field office by contacting the headquarters of the MSPB at (202) 653-7200 or visit www.mspb.gov for more information.

Electronic Filing of the MSPB Appeal

The electronic filing method is quickly becoming the most efficient process, and in some cases is required, for filing an MSPB appeal. Our law firm utilizes the electronic filing method from the filing of the initial appeal to the end of the appeals process. This method is helpful and easier than the mailing system. The key to preparing the electronic filing of

the MSPB appeal is to have all relevant information available when completing the online forms. Once the online forms and all attachments such as the proposed action and final agency decision have been prepared, then the appeal can be electronically submitted to the MSPB. Once submitted, the e-filer will receive confirmation of the filing from the MSPB. Following the proper submission of the appeal, the federal employee and the federal agency involved will receive an Acknowledgment Order, which sets forth the procedures and initial deadlines of the MSPB appeal.

Proper Completion of the MSPB Appeal Forms

Properly completing the MSPB initial appeal at the beginning of the process is very important. Doing so provides a federal employee with the best chance of litigating or settling his or her appeal. A well-prepared filing enables an Administrative Judge the ability to analyze an appeal and advise the parties on early settlement. A thoroughly prepared appeal also puts the federal employee in the best position to litigate his or her case to a hearing if the Administrative Judge understands a federal employee's legal arguments at the start of the case. If the Administrative Judge does not understand the appeal, he or she is less likely to focus on the case and key issues may get lost or not register in the appeals process. Our firm advises clients to have an attorney review and prepare the initial appellate filing.

Contact Us

Berry & Berry, PLLC represents federal employees in employment, administrative, labor union, and security clearance matters nationwide and abroad. Please contact us at (703) 668-0070 or www.berrylegal.com to schedule an initial consultation.

Attorneys

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Practice Areas

Merit Systems Protection Board (MSPB)