

## The MSPB Pre-Hearing Process

March 21, 2014

Our law firm represents and advises federal employees in their Merit System Protection Board (MSPB) appeals. During the litigation of MSPB appeals, the pre-hearing written submission and pre-hearing conference are important. These two events typically occur approximately 30 days prior to the actual MSPB hearing.

### The Pre-Hearing Written Submission

Typically, the parties will submit a pre-hearing written submission prior to the pre-hearing conference specifying each party's view of the issues in the case, the proposed exhibits, material facts not in dispute, and the proposed witnesses for the hearing. The pre-hearing submission will be submitted to the MSPB administrative judge and the federal agency's attorney. The federal employee will receive a copy of the federal agency's pre-hearing submission from the federal agency's attorney.

### The Pre-Hearing Conference

The MSPB pre-hearing conference will take place prior to the hearing. The pre-hearing conference is typically conducted by telephone between the MSPB administrative judge, the federal agency's attorney, and the federal employee's attorney (and possibly the federal employee). During the teleconference, the parties will discuss the issues, location, and procedures for the upcoming hearing.

The MSPB administrative judge may also further discuss possible settlement and potential stipulations between the parties. In our experience, the duration of the pre-hearing conference is usually between 30 to 90 minutes.

During the pre-hearing conference, the MSPB administrative judge may ask the parties for each side's legal arguments concerning the admission of exhibits but typically focuses primarily on which individuals will testify and how many witnesses will be present at the hearing. The purpose is to ensure that only relevant, non-repetitive testimony is heard and to determine the number of days that will be needed for the hearing (usually 1 or 2 days).

The attorney for the federal agency may attempt to limit the witnesses that will testify, so the federal employee (or his or her attorney) must be able to argue the relevance of each witness. The parties may also object to potential exhibits offered by each party if the administrative judge decides to review the admissibility of exhibits during the conference call.

### The Hearing Order

Following the pre-hearing conference, the MSPB administrative judge will usually issue a hearing order and summary of the pre-hearing conference. The hearing order will list the

hearing date(s), the hearing location, the issues to be heard at the hearing, the witnesses that have been approved to testify, the rulings made on exhibits, and any other important information needed to adjudicate the MSPB appeal.

### **Conclusion**

We believe it is important that a federal employee has legal representation during the MSPB pre-hearing process to help ensure that 1) key witnesses are present at the hearing; 2) important legal theories become part of the issues acknowledged for the hearing; 3) key exhibits are included; and 4) questionable exhibits from the federal agency's counsel receive an objection.

### **Contact Us**

Our firm represents federal employees in Appeals and Petition for Reviews before the Merit Systems Protection Board (MSPB) throughout the United States. Please contact us at (703) 668-0070 or [www.berrylegal.com](http://www.berrylegal.com) to schedule a consultation with one of our attorneys to discuss your MSPB matter.

### **Attorneys**

John V. Berry

### **Practice Areas**

Merit Systems Protection Board (MSPB)