

What to Expect During an MSPB Hearing

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Federal employees often ask what happens during an actual hearing before the [Merit Systems Protection Board](#) (MSPB). A hearing, especially for an unrepresented federal employee, can be a daunting process. This article focuses on what federal employees can expect during a typical MSPB hearing.

Location of the Hearing

The MSPB hearing usually takes place with an administrative judge who either attends in person or by video-teleconference. The location for an in-person hearing is typically at an MSPB local office. However, the hearing site might also be located at the employee's work site. If the hearing is conducted remotely, then the hearing will likely be held at the Agency's closest video-teleconference location. In such a case, it is typical that all parties, witnesses, and attorneys will be present at the video-conference location and the administrative judge will be the only individual attending the hearing remotely.

Before the Hearing Begins

The administrative judge will usually ask the parties whether there are any outstanding issues before the hearing begins. Usually, there are no issues, but sometimes issues involving exhibits or witnesses could arise that need to be resolved before the hearing begins. In addition, the administrative judge may swear in all of the witnesses at the same time (or individually as they testify) and then sequester the witnesses (keep them in a room outside of the hearing) until their testimony is heard.

Hearings are generally open to the public unless the administrative judge, in his or her discretion, believes that it would be better to close off either the entire hearing or a portion of it. This decision will be made prior to the start of the hearing. In addition, before the hearing begins, the court reporter hired by the MSPB will set up his or her equipment and prepare to record the legal arguments, statements, objections, and rulings that will occur during the hearing.

Opening Statements

Following the introductory issues, the administrative judge may permit the parties to present opening statements. Sometimes, the administrative judge does not permit opening statements, especially if time is a concern and there are numerous witnesses. If permitted, opening statements typically last about 10-20 minutes for each party. The Agency's attorney will usually proceed first because the Agency holds the burden of proof (in disciplinary cases). Next, the Appellant (federal employee) will have the opportunity to respond with an opening statement or at the beginning of his or her case.

The Actual Hearing

Following opening statements, the main portion of the MSPB hearing typically begins. The Agency will first call its witnesses in the case. Then the Appellant or his or her attorney will have the opportunity to cross-examine each of the Agency's witnesses. When the Agency's witnesses have been questioned by both parties, the next step in the hearing process is for the Appellant to call his or her witnesses.

Once all of the witnesses have been questioned, there is the possibility for rebuttal evidence to be presented. Rebuttal does not occur in every case, but sometimes testimony or issues will arise during the course of an MSPB hearing that require another witness (or require the parties to recall a previous witness) to testify. For instance, if the last scheduled witness in a hearing unexpectedly testifies that a prior witness had lied in his or her testimony, it would be important to recall the earlier witness through rebuttal in order to respond.

Closing Statements or Briefs

Once all witness testimonies have been concluded, the next step is generally to present closing arguments. Again, the Agency will usually proceed first in disciplinary cases followed by the Appellant. Sometimes, if a case has involved a lot of testimony, is complex in some manner, or requires legal arguments to be presented to the administrative judge, the parties may submit closing briefs instead of closing arguments. After the closing arguments or closing briefs have been submitted, the record is considered closed and the case is ready for a decision by the administrative judge.

After the Hearing

While the timeline for a decision varies, an MSPB administrative judge usually issues a decision 2-60 days after the hearing. However, in our experience, the final decision is issued somewhere between 30-45 days. If the final decision is positive for the Appellant, the next step may be to enforce the terms of the decision. The Agency may also decide to appeal the final decision. If the Agency is successful in the initial decision, the Appellant may appeal the adverse decision to the full MSPB Board, which oversees the MSPB. The MSPB Board consists of a 3-person panel.

Contact Us

When facing the MSPB process, it is important for a federal employee to have legal advice and representation. Our law firm represents federal employees before the MSPB and can be contacted at www.berrylegal.com or by telephone at (703) 668-0070. Please also visit us on Facebook page at www.facebook.com/BerryBerryPllc.

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Practice Areas

Merit Systems Protection Board (MSPB)