

§ 1208.25

issued, the appellant may elect to terminate the Board proceeding as provided under 5 U.S.C. 3330b and file a civil action with an appropriate United States district court. Such election must be in writing, filed with the Board office where the appeal is being processed, and served on the parties. The election is effective immediately on the date of receipt by the Board office where the appeal is being processed.

(b) *Termination order.* Following receipt by the Board of an appellant's written election to terminate the Board proceeding, a termination order will be issued to document the termination of the proceeding. The termination order will state that the proceeding was terminated as of the date of receipt of the appellant's written election. Such an order is neither an initial decision under 5 CFR 1201.111 nor a final Board decision and is not subject to a petition for review in accordance with subpart C of part 1201, a petition for enforcement in accordance with subpart F of part 1201, or a petition for judicial review.

§ 1208.25 Remedies.

(a) *Order for compliance.* If the Board determines that a Federal agency has violated the appellant's VEOA rights, the decision of the Board (either an initial decision of a judge under 5 CFR 1201.111 or a final Board decision under 5 CFR 1201.117) will order the agency to comply with the statute or regulation violated and to compensate the appellant for any loss of wages or benefits suffered by the appellant because of the violation. If the Board determines that the violation was willful, it will order the agency to pay the appellant an amount equal to back pay as liquidated damages.

(b) *Attorney fees and expenses.* If the Board issues a decision ordering compliance under paragraph (a) of this section, the Board will order payment of reasonable attorney fees, expert witness fees, and other litigation expenses. The provisions of subpart H of part 1201 shall govern any proceeding for attorney fees and expenses.

5 CFR Ch. II (1-1-02 Edition)

§ 1208.26 Appeals under another law, rule, or regulation.

(a) The VEOA provides that 5 U.S.C. 3330a shall not be construed to prohibit a preference eligible from appealing directly to the Board from any action that is appealable under any other law, rule, or regulation, in lieu of administrative redress under VEOA (5 U.S.C. 3330a(e)(1)). An appellant may not pursue redress for an alleged violation of veterans' preference under VEOA at the same time he pursues redress for such violation under any other law, rule, or regulation (5 U.S.C. 3330a(e)(2)).

(b) An appellant who elects to appeal to the Board under another law, rule, or regulation must comply with the provisions of subparts B and C of 5 CFR part 1201, including the time of filing requirement of 5 CFR 1201.22(b)(1).

PART 1209—PRACTICES AND PROCEDURES FOR APPEALS AND STAY REQUESTS OF PERSONNEL ACTIONS ALLEGEDLY BASED ON WHISTLEBLOWING

Subpart A—Jurisdiction and Definitions

- Sec.
- 1209.1 Scope.
- 1209.2 Jurisdiction.
- 1209.3 Application of 5 CFR part 1201.
- 1209.4 Definitions.

Subpart B—Appeals

- 1209.5 Time of filing.
- 1209.6 Content of appeal; right to hearing.
- 1209.7 Burden and degree of proof.

Subpart C—Stay Requests

- 1209.8 Filing a request for a stay.
- 1209.9 Content of stay request and response.
- 1209.10 Hearing and order ruling on stay request.
- 1209.11 Duration of stay; interim compliance.

Subpart D—Reports on Applications for Transfers

- 1209.12 Filing of agency reports.

Subpart E—Referrals to the Special Counsel

- § 1209.13 Referral of findings to the Special Counsel.

AUTHORITY: 5 U.S.C. 1204, 1221, 2302(b)(8), and 7701.