

Mixed Case Complaints

The Office of Civil Rights (OCR) manages the Department of Commerce's Equal Employment Opportunity (EEO) Complaint Process. This fact sheet includes basic information about mixed case complaints, which contain issues that may be appealed to the Merit Systems Protection Board.

Q. What is the Merit Systems Protection Board (MSPB)?

A. The MSPB is an independent Federal agency that serves as the guardian of Federal merit systems. Under the Civil Service Reform Act of 1978 (CSRA), most Federal employees may appeal various personnel actions affecting them to the MSPB. The MSPB appeal process is designed to ensure that federal employees are protected from unfair or arbitrary treatment.

Q. What kinds of actions may be appealed to the Board?

A. Under the CSRA, the majority of cases are appeals of agency adverse actions -- removals, suspensions of more than 14 days, reductions in grade or pay, furloughs of 30 days or less.

Other types of actions that may be appealed to the Board include: performance-based removals or reductions in grade, denials of within-grade salary increases, reduction-in-force actions, Office of Personnel

Management (OPM) suitability determinations, OPM employment practices, OPM determinations in retirement matters, denials of restoration or reemployment rights, and terminations of probationary employees under certain circumstances.

Q. May all federal employees file appeals with the MSPB?

A. No. The employees and others (e.g. applicants for employment, annuitants in retirement cases) who may appeal specific actions to the MSPB vary in accordance with the law and regulations governing those actions. Generally, Commerce employees who may appeal adverse actions are:

- Employees in the competitive service who have completed a one-year probationary period or trial period;
- Veterans preference-eligible employees with at least one year of continuous employment in the same or similar positions outside the competitive service; and

- Excepted service employees, other than preference-eligibles, who are not serving a probationary or trial period and who have completed two years of current continuous service in the same or similar positions in an Executive agency.

Q. Must agencies advise employees of their right to appeal personnel actions to the Board?

A. Yes. When an agency takes an appealable action against an employee, the agency must provide the employee with notice of their MSPB appeal rights.

Q. What is a mixed case complaint?

A. A mixed case complaint is a complaint of employment discrimination based on race, color, religion, sex, national origin, age or disability related to or stemming from an action that can be appealed to the Merit Systems Protection Board (MSPB). The complaint may contain only an allegation of employment discrimination or it may contain additional allega-

tions that the MSPB has jurisdiction to address.

Q. Must a mixed case claim be raised in the EEO complaint process?

A. No. An employee can choose to raise a mixed case claim in **either** an EEO complaint or an MSPB appeal, but may **not** use both processes.

A person chooses a forum by filing an MSPB appeal or a formal EEO complaint. Receiving informal EEO counseling is not considered a choice to use the EEO complaint process.

If both a mixed case complaint and a mixed case appeal are filed, the action that was filed last will be dismissed.

Q. How does the processing of a mixed case complaint differ from the processing of other EEO complaints?

A. The procedures used to process mixed case complaints are the same as those used in other EEO complaints with several key exceptions:

- In a mixed case complaint, there is no right to a hearing in the formal complaint process.
- In a mixed case, a Final

Agency Decision (FAD) must be issued within 45 days of the completion of the investigation. FADs are based on the written record, which includes all documents, witness statements, and other materials collected during the course of the investigation.

- EEOC regulations require OCR to issue a Final Agency Decision on a Mixed Case complaint in a shorter time frame: within 120 days from the date the complaint is filed. If 120 days have passed and the Department has not issued a FAD, the complainant may file a civil action without completing the administrative process.

- The appeal process for mixed case complaints differs from the appeal process for other EEO complaints. Initial appeals of merit decisions in mixed case complaints are made to the MSPB, instead of the EEOC. The appeal process works as follows:

- A complainant may file an appeal with the MSPB (a) within 30 days from the date s/he receives the FAD **or** (b) any time after 120 days if the FAD has not been issued.

- The MSPB's decision may be appealed to the EEOC within 30 days of the

complainant's receipt of the decision. If the EEOC disagrees with the MSPB, the MSPB is given an opportunity to adopt the EEOC's decision.

- If the MSPB does not adopt the EEOC's decision, the appeal is referred to a special panel made up of representatives from both the MSPB and the EEOC. The special panel issues a final decision on the appeal.

- The Special Panel's decision may be appealed to the appropriate United States District Court.

Q. How can I get more information about the MSPB appeal process?

A. See the MSPB web site at www.mspb.gov, E-mail mspb@mspb.gov, or call 1-800-209-8960.

Q. How can I get more information about the EEO complaint process?

A. See OCR's web site at www.osec.doc.gov/ocr, contact your Bureau EEO Officer or call OCR at 202/482-4993. (Voice) TTY users may call via relay at 1-800-877-8339.

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