
Veterans' Preference in Appointments

Why Preference is Given

Since the time of the Civil War, veterans of the Armed Forces have been given some degree of preference in appointments to Federal jobs. Recognizing their sacrifice, Congress enacted laws to prevent veterans seeking Federal employment from being penalized for their time in military service. Veterans' preference recognizes the economic loss suffered by citizens who have served their country in uniform, restores veterans to a favorable competitive position for Government employment, and acknowledges the larger obligation owed to disabled veterans.

Veterans' preference in its present form comes from the Veterans' Preference Act of 1944, as amended, and is now codified in various provisions of title 5, United States Code. By law, veterans who are disabled or who served on active duty in the Armed Forces during certain specified time periods or in military campaigns are entitled to preference over others in hiring from competitive lists of eligibles and also in retention during reductions in force.

In addition to receiving preference in **competitive** appointments, veterans may be considered for special **noncompetitive** appointments for which only they are eligible. See Chapter 4.

When Preference Applies

Preference in hiring applies to permanent and temporary positions in the competitive and excepted services of the executive branch. Preference does not apply to positions in the Senior Executive Service or to executive branch positions for which Senate confirmation is required. The legislative and judicial branches of the Federal Government also are exempt from the Veterans' Preference Act **unless** the positions are in the competitive service (Government Printing Office, for example) or have been made subject to the Act by another law.

Preference applies in hiring from civil service examinations conducted by the Office of Personnel Management (OPM) and agencies under delegated examining authority, for most excepted service jobs including Veterans Recruitment Appointments (VRA), and when agencies make temporary, term, and overseas limited appointments. Veterans' preference does not apply to promotion, reassignment, change to lower grade, transfer or reinstatement.

Veterans' preference does not require an agency to use any particular appointment process. Agencies have broad authority under law to hire from any appropriate source of eligibles including special appointing authorities. An agency may consider candidates already in the civil service from an agency-developed merit promotion list or it may reassign a current employee, transfer an employee from another agency, or reinstate a former Federal employee. In addition, agencies are required to give priority to displaced employees before using civil service examinations and similar hiring methods.

Civil service examination: 5 U.S.C. 3304-3330, 5 CFR Part 332, OPM Delegation Agreements with individual agencies, OPM Examining Handbook, OPM Delegated Examining Operations Handbook; **Excepted service appointments, including VRA's:** 5 U.S.C. 3320; 5 CFR Part 302; **Temporary and term employment:** 5 CFR Parts 316 and 333; **Overseas limited employment:** 5 CFR Part 301; **Career Transition Program:** 5 CFR Part 330, Subparts F and G.

Types of Preference

To receive preference, a veteran must have been discharged or released from active duty in the Armed Forces under honorable conditions (i.e., with an honorable or general discharge). As defined in 5 U.S.C. 2101(2), "Armed Forces" means the Army, Navy, Air Force, Marine Corps and Coast Guard. The veteran must also be eligible under one of the preference categories below (also shown on the Standard Form (SF) 50, *Notification of Personnel Action*).

Military retirees at the rank of major, lieutenant commander, or higher are not eligible for preference in appointment unless they are disabled veterans. (This does not apply to Reservists who will not begin drawing military retired pay until age 60.)

For non-disabled users, active duty for training by National Guard or Reserve soldiers does not qualify as "active duty" for preference.

For disabled veterans, active duty includes training service in the Reserves or National Guard, per the Merit Systems Protection Board decision in *Hesse v. Department of the Army*, 104 M.S.P.R.647(2007).

For purposes of this chapter and 5 U.S.C. 2108, "war" means only those armed conflicts declared by Congress as war and includes World War II, which covers the period from December 7, 1941, to April 28, 1952.

When applying for Federal jobs, eligible veterans should claim preference on their application or resume. Applicants claiming 10-point preference must complete Standard Form (SF) 15, *Application for 10-Point Veteran Preference*, and submit the requested documentation.

The following preference categories and points are based on 5 U.S.C. 2108 and 3309 as modified by a length of service requirement in 38 U.S.C. 5303A(d). (The letters following each category, e.g., "TP," are a shorthand reference used by OPM in competitive examinations.)

5-Point Preference (TP)

Five points are added to the **passing** examination score or rating of a veteran who served:

- During a war; **or**
- During the period April 28, 1952 through July 1, 1955; **or**
- For more than 180 consecutive days, other than for training, any part of which occurred after January 31, 1955, and before October 15, 1976; **or**
- During the Gulf War from August 2, 1990, through January 2, 1992; **or**
- For more than 180 consecutive days, other than for training, any part of which occurred during the period beginning September 11, 2001, and ending on the date prescribed by Presidential proclamation or by law as the last day of Operation Iraqi Freedom; **or**
- In a campaign or expedition for which a campaign medal has been authorized. Any Armed Forces Expeditionary medal or campaign badge, including El Salvador, Lebanon, Grenada, Panama, Southwest Asia, Somalia, and Haiti, qualifies for preference.

A campaign medal holder or Gulf War veteran who originally enlisted after September 7, 1980, (or began active duty on or after October 14, 1982, and has not previously completed 24 months of continuous active duty) must have served continuously for 24 months or the full period called or ordered to active duty. The 24-month service

requirement does not apply to 10-point preference eligibles separated for disability incurred or aggravated in the line of duty, or to veterans separated for hardship or other reasons under 10 U.S.C. 1171 or 1173.

A word about Gulf War Preference...

The Defense Authorization Act of Fiscal Year 1998 (Public Law 105-85) of November 18, 1997, contains a provision (section 1102 of Title XI) which accords Veterans' preference to **everyone** who served on active duty during the period beginning August 2, 1990, and ending January 2, 1992, provided, of course, the veteran is otherwise eligible.

This means that anyone who served on active duty during the Gulf War, regardless of where or for how long, is entitled to preference if otherwise eligible (i.e., have been separated under honorable conditions and served continuously for a minimum of 24 months or the full period for which called or ordered to active duty). This applies not only to candidates seeking employment, but to Federal employees who may be affected by reduction in force, as well.

Questions and Answers about Gulf War Preference

Q. Public Law 105-85 of November 18, 1997, contains a provision (section 1102 of Title XI) which accords Veterans' preference to anyone who served on active duty, anywhere in the world, for any length of time between August 2, 1990, and January 2, 1992, provided the person is "otherwise eligible." What does "otherwise eligible" mean, here?

A. It means the person must have been separated from the service under honorable conditions and have served continuously for a minimum of 24 months or the full period for which called or ordered to active duty. For example, someone who enlisted in the Army and was serving on active duty when the Gulf War broke out on Aug 2, 1990, would have to complete a minimum of 24 months service to be eligible for preference. On the other hand a Reservist who was called to active duty for a month and spent all his time at the Pentagon before being released would also be eligible. What the law did was to add an additional paragraph (C) covering Gulf War veterans to 5 U.S.C. 2108(1) (on who is eligible for preference). But, significantly, the law made no other changes to existing law. In particular, it did not change paragraph (4) of section 2108 (the Dual Compensation Act of 1973), which severely restricts preference entitlement for retired officers at the rank of Major and above. When the Dual Compensation Act was under consideration, there was extensive debate in Congress as to who should be entitled to preference. Congress basically compromised by giving preference in appointment to most retired military members (except for "high-ranking officers" who were not considered to need it), but severely limiting preference in RIF for all retired military because they had already served one career and should not have preference in the event of layoffs.

So, "otherwise eligible" means that the individual must be eligible under existing law.

Q. Which provision of the new law contains the 24 month service requirement for regular military service members on active duty as opposed to reservists who are called or ordered to active duty?

A. The 24 month service requirement provision is found in Section 5303A of title 38, United States Code which defines the minimum active-duty service requirement for those who initially enter active duty after September 7, 1980.

Q. Can an applicant claim preference based on Gulf War service after January 2, 1992?

A. The law specifies that only those on active duty during the period beginning August 2, 1990, and ending January 2, 1992, are eligible for preference. Applicants who served on active duty exclusively after these dates would have to be in receipt of a campaign badge or expeditionary medal.

Q. Are there any plans to extend Veterans' preference to any other groups of individuals who served on active duty during times of conflict that may not have served in specific theaters of operation?

A. We are not aware of any plans to extend Veterans' preference to any other group of individuals.

Q. An applicant is claiming preference based on service in Bosnia, but he/she has no DD Form 214 to support his claim. Can we give him/her preference?

A. A service member whose record appears to show service qualifying for Veterans' preference (for example, there is an indication that the person served in Bosnia in 1996), may be accorded 5 points tentative preference on that basis alone. However, before the person can be appointed, he or she must submit proof of entitlement to preference. That proof may be an amended DD Form 214 showing the award of the Armed Forces Expeditionary Medal (AFEM) for Bosnia in the case of service members who served there and were released prior to enactment of the recent Veterans' preference amendments, or it may be other official documentation showing award of the Armed Forces Expeditionary Medal.

Q. How are we to know that a Reservist was, in fact, a) called to active duty, and b) served the full period for which called? Don't some Reservists just receive a letter telling them they are being placed on active duty?

A. A Reservist will always have orders placing him (or her) on active duty -- (it is the only way the Reservist can be paid). While the individual may also have a letter saying that he or she is being called up, there will always be orders backing this up. Similarly, when the Reservist is released from active duty, he or she will always have separation or demobilization orders.

Q. Several employees have come to the agency personnel office claiming they should have preference under the new law, but they have no proof of service during the specified period. We are getting ready to issue Reduction In Force (RIF) notices. Should we take the employees' word for it or wait until they have proof?

A. The employees cannot be given Veterans' preference without required documentation. The agency should work with the employee and the appropriate military service record organizations to obtain this documentation as soon as possible to avoid having to "rerun" the Reduction In Force at the last minute.

Q. If our agency has "frozen" personnel actions and issued Reduction In Force notices but the Reduction In Force effective date has not yet arrived, how can we account for any changes in Veterans' preference status?

A. Regardless of where you are in the process of carrying out the Reduction In Force, you must correct the Veterans' preference of employees who will now be eligible as a result of the statute. Veterans' preference cannot be "frozen"

like qualifications or performance appraisals--it must be corrected right up until the day of the Reduction In Force. If a change in preference results in a different outcome for one or more employees, amended Reduction In Force notices must be issued. If such a change results in a worse offer, the affected employee must be given a full 60/120 day notice period required by regulation. This may require the agency to use a temporary exception to keep one or more employees on the rolls past the Reduction In Force effective date in order to meet this obligation.

Q. Our agency already completed a Reduction In Force effective November 28, 1997. There is at least one separated employee who would now have Veterans' preference and would not have been separated if we had known about the change in statute. What do we do now?

A. If an agency finds that an eligible employee reached for Reduction In Force separation or downgrading effective on or after November 18, 1997, was not provided retention preference consistent with P.L. 105-85, The Office of Personnel Management recommends that the agency take appropriate corrective action.

An employee not provided appropriate retention preference may appeal the Reduction In Force action to the Merit Systems Protection Board (MSPB). MSPB normally requires the appeal to be filed within 30 days of the Reduction In Force effective date, but Merit Systems Protection Board may, at its option, accept later appeals filed within 30 days of the employee becoming aware of the change.

If an employee was separated or downgraded by Reduction In Force, the agency should determine whether or not the employee would have been affected differently based on the change in Veterans' preference. If the employee would still be separated or downgraded, the agency should correct the employee's notice. If the employee was separated, the agency should also correct the Reemployment Priority List (RPL) registration (if any) to accurately reflect their Veterans' preference.

If the corrective action results in a surplus of employees in one or more competitive levels, the agency may have to run a new Reduction In Force. However, the agency cannot retroactively adjust the results of the prior Reduction In Force.

Q. What if an employee would have been registered as a I-A on the agency's Reemployment Priority List due to the new law, but has been listed as a I-B? What is the agency's obligation to make up for any lost consideration as a result?

A. The employee's registration status on the Reemployment Priority List should be corrected immediately so that the employee will be considered as a I-A for the remainder of their time on the Reemployment Priority List. If the agency finds that a lower standing person was selected over the employee, the agency must notify the employee of the selection and their right to appeal to Merit Systems Protection Board. If the employee files an Reemployment Priority List appeal, Merit Systems Protection Board may order a retroactive remedy which could include extending the employee's time period for consideration under the Reemployment Priority List.

[A word about Man-Day Tours...](#)

We have received several inquiries concerning the status of "man-day tours." Specifically, agency personnel offices have asked, "Are man-day tours considered regular active duty -- and thus qualifying for Veterans' preference -- or are they really active duty for training and thereby not qualifying?"

The questions arose because many Air Force Reservists were placed on these so-called man-day tours -- also known as, active duty in support (ADS) -- for only a few days during the Gulf War and Operation Provide Comfort (in support of the Kurds) during which they would fly a quick mission to the Gulf, get the Southwest Asia Service Medal (SWASM) and come home, then be released. Although they had orders, they received no DD Form 214.

Some agency personnel offices were according these Reservists preference; while other offices were not. Some Reservists were awarded preference, then had it withdrawn on the basis that they were only performing active duty for training.

Based on discussions with the Department of Defense, Office of Reserve Affairs and Air Force Instruction 36-2619 of 7/22/94, which discusses man-day tours, man-day tours are apparently regular active duty tours. Therefore, these man-day tours are qualifying for preference if the individual was awarded the SWASM or served during the period 8/2/90 to 1/2/92.

This service is also referred to as MPA man-days because it is funded out of the military appropriation account (MPA), an active duty account. Man-days support short-term needs of the active force by authorizing no more than 139 days annually to airmen and officers who are typically placed on active duty under 10 U.S.C. 12301(d) (ordered to active duty with the individual's consent). This authority should appear on the orders. Man-day tours are supposed to accommodate a temporary need for personnel with unique skills that cannot be economically met through the active force.

Based on the above, we have determined that Federal agencies should treat man-day tours as regular active duty unless there is some clear indication on the orders that it is active duty for training. Also, please note that the SWASM (or any campaign or expeditionary medal) is awarded only for active service in hostile areas; a Reservist performing active duty for training would not be eligible for one of these medals.

10-Point Compensable Disability Preference (CP)

Ten points are added to the **passing** examination score or rating of:

- A veteran who served at any time **and** who has a compensable service-connected disability rating of at least 10 percent but less than 30 percent.

10-Point 30 Percent Compensable Disability Preference (CPS)

Ten points are added to the **passing** examination score or rating of a veteran who served at any time and who has a compensable service-connected disability rating of 30 percent or more.

10-Point Disability Preference (XP)

Ten points are added to the **passing** examination score or rating of:

- A veteran who served at any time and has a present service-connected disability or is receiving compensation, disability retirement benefits, or pension from the military or the Department of Veterans Affairs but does not qualify as a CP or CPS; **or**
- A veteran who received a Purple Heart.

10-Point Derived Preference (XP)

Ten points are added to the **passing** examination score or rating of spouses, widows, widowers, or mothers of veterans as described below. This type of preference is usually referred to as "derived preference" because it is based on service of a veteran who is not able to use the preference.

Both a mother and a spouse (including widow or widower) may be entitled to preference on the basis of the same veteran's service if they both meet the requirements. However, neither may receive preference if the veteran is living **and** is qualified for Federal employment.

Spouse

Ten points are added to the **passing** examination score or rating of the spouse of a disabled veteran who is disqualified for a Federal position along the general lines of his or her usual occupation **because of a service-connected disability** . Such a disqualification may be presumed **when the veteran is unemployed and**

- is rated by appropriate military or Department of Veterans Affairs authorities to be 100 percent disabled and/or unemployable; **or**
- has retired, been separated, or resigned from a civil service position on the basis of a disability that is service-connected in origin; **or**
- has attempted to obtain a civil service position or other position along the lines of his or her usual occupation and has failed to qualify **because of a service-connected disability** .

Preference may be allowed in other circumstances but anything less than the above warrants a more careful analysis.

NOTE: Veterans' preference for spouses is different than the preference the Department of Defense is required by law to extend to spouses of active duty members in filling its civilian positions. For more information on that program, contact the Department of Defense.

Widow/Widower

Ten points are added to the passing examination score or rating of the widow or widower of a veteran who was not divorced from the veteran, has not remarried, or the remarriage was annulled, and the veteran either:

- served during a war or during the period April 28, 1952, through July 1, 1955, or in a campaign or expedition for which a campaign medal has been authorized; **or**
- died while on active duty that included service described immediately above under conditions that would not have been the basis for other than an honorable or general discharge.

Mother of a deceased veteran

Ten points are added to the **passing** examination score or rating of the mother of a veteran who died under honorable conditions while on active duty during a war or during the period April 28, 1952, through July 1, 1955, or in a campaign or expedition for which a campaign medal has been authorized; **and**

- she is or was married to the father of the veteran; **and**
- she lives with her totally and permanently disabled husband (either the veteran's father or her husband through remarriage); **or**
- she is widowed, divorced, or separated from the veteran's father and has not remarried; **or**
- she remarried but is widowed, divorced, or legally separated from her husband when she claims preference.

Mother of a disabled veteran

Ten points are added to the **passing** examination score or rating of a mother of a living disabled veteran if the veteran was separated with an honorable or general discharge from active duty, including training service in the Reserves or National Guard, performed at any time **and** is permanently and totally disabled from a service-connected injury or illness; and the mother:

- is or was married to the father of the veteran; **and**
- lives with her totally and permanently disabled husband (either the veteran's father or her husband through remarriage); **or**
- is widowed, divorced, or separated from the veteran's father and has not remarried; **or**
- remarried but is widowed, divorced, or legally separated from her husband when she claims preference.

Note: Preference is not given to widows or mothers of deceased veterans who qualify for preference under 5 U.S.C. 2108 (1) (B), (C) or (2). Thus, the widow or mother of a deceased disabled veteran who served after 1955, but did not serve in a war, campaign, or expedition, would not be entitled to preference.

5 U.S.C. 2108, 3309; 38 U.S.C. 5303A

Adjudication of Veterans' Preference Claims

Agencies are responsible for adjudicating all preference claims except claims for preference based on common-law marriage, which should be sent to the Office of Personnel Management (OPM), Office of the General Counsel, 1900 E.St. NW, Washington, DC 20415.

5 U.S.C. 3309, 3313 and 5 CFR 332.401, 337.101

Crediting Experience of Preference Eligibles

In evaluating experience, an examining office must credit a preference eligible's Armed Forces service as an extension of the work performed immediately prior to the service, or on the basis of the actual duties performed in the service, or as a combination of both, whichever would most benefit the preference eligible.

The examining office must also give all applicants credit for job-related experience, paid and unpaid, including experience in religious, civic, welfare, service and organizational activities.

5 U.S.C. 3311, 5 CFR 337.101

Physical Qualifications

In determining qualifications, agencies must waive a medical standard or physical requirement when there is sufficient evidence that the employee or applicant, with or without reasonable accommodation, can perform the essential duties of the position without endangering the health and safety of the individual or others.

Special provisions apply to the proposed disqualification of a preference eligible with a 30 percent or more compensable disability. See *Disqualification of 30 Percent or more Disabled Veterans* below.

5 U.S.C. 3312, 5 CFR Part 339.204

Age Qualifications

On July 2, 2008, the Merit Systems Protection Board (Board) issued a final decision in *Robert P. Isabella v. Department of State and Office of Personnel Management*, 2008 M.S.P.B. 146, that affects preference eligibles who apply for federal positions having a maximum entry-age restriction. The Board decided that the agency's failure to waive the maximum entry-age requirements for Mr. Isabella, a preference eligible veteran, violated his rights under the Veteran Employment Opportunities Act of 1998 (VEOA) because there was no demonstration that a maximum entry-age was essential to the performance of the position.

Based on the Board's decision in *Isabella*, qualified preference eligibles may now apply and be considered for vacancies regardless of whether they meet the maximum age requirements identified at 5 U.S.C. 3307. In order to determine whether it must waive a maximum entry-age requirement, an agency must first analyze the affected position to determine whether age is essential to the performance of the position. If the agency decides age is not essential to the position, then it must waive the maximum entry-age requirement for veterans' preference eligible applicants. In instances where the maximum entry-age is waived, the corresponding mandatory retirement age for these individuals will also be higher because it will be reached after 20 years of Law Enforcement Officer (LEO) service for the entitlement to an immediate enhanced annuity.

The same principles set forth above would apply to appointments to other types of positions for which the setting of maximum entry ages are authorized under 5 U.S.C. § 3307. These types of positions are: (1) firefighters, (2) air traffic controllers, (3) United States Park police, (4) nuclear materials couriers, and (5) customs and border patrol officers (subject to the Federal Employees Retirement System, 5 U.S.C. § 8401 *et seq.* only).

Preference in Competitive Examinations

Preference eligibles who are qualified for a position and achieved a passing score have 5 or 10 extra points added to their numerical ratings depending on which of the previously described categories of preference they meet. This means the highest possible rating is 110 (a disabled veteran who earns a score of 100 has 10 extra points added).

Names of eligible applicants are placed on lists, or registers of eligibles, in the order of their ratings. Competitor inventories are established from which selections will be made over a period of time and for case examining in which a register is used to fill a single position or a group of positions and is closed after the needed selection(s) is made.

For scientific and professional positions in grade General Schedule (GS) - 9 or higher, names of all qualified applicants are listed on competitor inventories in order of their ratings, augmented by veteran preference, if any.

For all other positions, the names of 10-point preference eligibles who have a compensable, service-connected disability of 10 percent or more (CP and CPS) are listed at the top of the register in the order of their ratings ahead of the names of all other eligibles. The names of other 10-point preference eligibles, 5-point preference eligibles, and other applicants are listed in order of their numerical ratings.

A preference eligible is listed ahead of a nonpreference eligible having the same final rating.

5 U.S.C. 3309, 3313 and 5 CFR 332.401 and 337.101

Filling a Position Through the Competitive Examining Process

Announcing the Vacancy

To fill a vacancy by selection through the competitive examining process, the selecting official requests a list of eligibles from the examining office. The examining office must announce the competitive examining process through USAJOBS. OPM will notify the State employment service where the job is being filled. Subsequently, the examining office determines which applicants are qualified, rates and ranks them based on their qualifications, and issues a certificate of eligibles, which is a list of eligibles with the highest scores from the top of the appropriate register. A certificate of eligibles may be used for permanent, term, or temporary appointment.

Category Rating

Category rating is an alternative ranking and selection procedure authorized under the Chief Human Capital Officers Act of 2002 (Title XIII of the Homeland Security Act of 2002) and codified at 5 U.S.C. § 3319. Category rating is part of the competitive examining process. Under category rating, applicants who meet basic minimum qualification requirements established for the position and whose job-related competencies or knowledge, skills and abilities (KSAs) have been assessed are ranked by being placed in one of two or more predefined quality categories instead of being ranked in numeric score order. Preference eligibles are listed ahead of non-preference eligibles within each quality category. Veterans' preference is absolute within each quality category. For more detailed information on Category Rating please visit Chapter 5 of the Delegated Examining Operations Handbook.

The "Rule of Three" and Veteran pass overs

Selection must be made from the highest three eligibles on the certificate who are available for the job--the "rule of three." However, an agency may not pass over a preference eligible to select a lower ranking nonpreference eligible or nonpreference eligible with the same or lower score.

Example: If the top person on a certificate is a 10-point disabled veteran (CP or CPS) and the second and third persons are 5-point preference eligibles, the appointing authority may choose any of the three.

Example: If the top person on a certificate is a 10-point disabled veteran (CP or CPS), the second person is not a preference eligible, and the third person is a 5-point preference eligible, the appointing authority may choose either of

the preference eligibles. The appointing authority may not pass over the 10-point disabled veteran to select the nonpreference eligible unless an objection has been sustained.

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Disqualifications of Preference Eligibles

A preference eligible can be eliminated from consideration only if the examining office sustains the agency's objection to the preference eligible for adequate reason. These reasons, which must be recorded, include medical disqualification under 5 CFR Part 339, suitability disqualification under 5 CFR Part 731, or other reasons considered by the Office of Personnel Management (OPM) or an agency under delegated examining authority to be **disqualifying**.

OPM must approve the sufficiency of an agency reason to **medically disqualify** or pass over a preference eligible on a certificate based on medical reasons to select a nonpreference eligible. **Special provisions apply to the proposed disqualification or pass over for any reason of a preference eligible with a 30 percent or more compensable disability. See *Disqualification of 30 Percent or more Disabled Veterans* below.**

Agencies have delegated authority for determining suitability in accordance with 5 CFR Part 731.

The preference eligible (or his or her representative) is entitled on request to a copy of the agency's reasons for the proposed pass over and the examining office's response.

An appointing official is not required to consider a person who has three times been passed over with appropriate approval or who has already been considered for three separate appointments from the same or different certificates for the same position. But in each of these considerations, the person must have been within reach under the rule of three and a selection must have been made from that group of three. Further, the preference eligible is entitled to advance notice of discontinuance of certification.

5 U.S.C. 3317, 3318 and 5 CFR 332.402, 332.404, 332.405, 332.406, and Parts 339 and 731

Disqualification of 30 Percent or More Disabled Veterans

The following special provisions apply to disabled veterans with a compensable service-connected disability of 30 percent or more:

- If an agency proposes to pass over a disabled veteran on a certificate to select a person who is not a preference eligible, or to disqualify a disabled veteran based on the physical requirements of the position, it must at the same time notify both the Office of Personnel Management (OPM) and the disabled veteran of the reasons for the determination and of the veteran's right to respond to OPM within 15 days of the date of the notification.
- The agency must provide evidence to OPM that the notice was timely sent to the disabled veteran's last known address.
- OPM must make a determination on the disabled veteran's physical ability to perform the duties of the position, taking into account any additional information provided by the veteran.
- OPM will notify the agency and the disabled veteran of its decision, with which the agency must comply. If OPM agrees that the veteran cannot fulfill the physical requirements of the position, the agency may select another person from the certificate of eligibles. If OPM finds the veteran able to perform the job, the agency may not pass over the veteran.
- OPM is prohibited by law from delegating this function to any agency.

5 U.S.C. 3312, 3318

Preference Eligibles and the Nepotism Provision

A public official may not advocate a relative for appointment, employment, promotion, or advancement, or appoint, employ, promote, or advance a relative, to a position in an agency in which the public official is employed or over which he or she exercises jurisdiction or control.

This restriction does not, however, prohibit the appointment of a preference eligible whose name is within reach for selection on an appropriate certificate of eligibles when an alternative selection cannot be made from the certificate without passing over the preference eligible and selecting an individual who is not a preference eligible.

5 U.S.C. 3110(e) and 5 CFR Part 310, Subpart A

Filing Late Applications

A veteran may file a late application under the following circumstances by contacting the employing agency. Agencies are responsible for accepting, retaining, and considering their applications as required by law and regulation regardless of whether the agency uses case examining or maintains a continuing register of eligibles.

Applications from 10-point preference eligibles must be accepted, as described below, for future vacancies that may arise after a case examining register or continuing register is closed. Agencies must accept applications from other individuals who are eligible to file on a delayed basis only as long as a case examining register exists.

- A **10-point preference eligible** may file a job application with an agency at any time. If the applicant is qualified for positions filled from a register, the agency must add the candidate to the register, even if the register is closed to other applicants. If the applicant is qualified for positions filled through case examining, the agency will ensure that the applicant is referred on a certificate as soon as possible. If there is no immediate opening, the agency must retain the application in a special file for referral on certificates for future vacancies for up to three years. The Office of Personnel Management's *Delegated Examining Operations Handbook* provides detailed instructions.
- A **preference eligible** is entitled to be reentered on each register (or its successor) where previously listed if he or she applies within 90 days after resignation without delinquency or misconduct from a career or career-conditional appointment.
- A **preference eligible** is entitled to be entered on an appropriate existing register if he or she applies within 90 days after furlough or separation without delinquency or misconduct from a career or career-conditional appointment or if found eligible to apply **after successfully appealing a furlough or discharge** from career or career-conditional appointment.

- A person who lost eligibility for appointment from a register because of active duty in the Armed Forces is entitled to be restored to the register (or its successor) and receive priority consideration when certain conditions are met. See 5 CFR 332.322 for more details.
- A person who was unable to file for an open competitive examination or appear for a test because of **service in the Armed Forces or hospitalization** continuing for up to 1 year following discharge may file after the closing date if the register of eligibles still exists.
- A **Federal employee** who was unable to file for an open competitive examination or appear for a test because of active Reserve duty continuing beyond 15 days may file after the closing date of an existing register.

5 U.S.C. 3305, 3314, 3315, and 5 CFR 332.311, 332.312, 332.321, 332.322

Excepted Service Employment

The Veterans' Preference Act requires an appointing authority in the executive branch to select from among qualified applicants for appointment to excepted service vacancies in the same manner and under the same conditions required for the competitive service by 5 U.S.C. 3308-3318. Appointments made with the advice and consent of the Senate are exempt.

Excepted Service Procedures for Pass Over of 30 Percent or More Disabled Veterans

In light of the decision of the United States Court of Appeals for the Federal Circuit in *Gingery v. Department of Defense*, an agency that wishes to pass over any preference eligible with a compensable, service-connected disability of 30 percent or more who has applied for a position in the excepted service subject to the appointment procedures in 5 CFR Part 302 must send its request to OPM for adjudication. (Part 302 procedures apply only to excepted service positions covered under title 5, United States Code, which have been excepted from the competitive service by the President or by OPM.)

This does not apply to hiring for positions (e.g., attorneys) exempt from part 302 procedures pursuant to 5 CFR 302.101(c). The *Gingery* panel did not overrule *Patterson v. Department of Interior*, which sustained section 302.101(c), and OPM's adoption of the standard that agencies filling positions that are exempt from Part 302 requirements need only follow the principle of veterans' preference as far as administratively feasible, i.e., consider veteran status as a positive factor when reviewing applications.

Office of Personnel Management regulations governing the application of Veterans' preference in excepted appointments are in 5 CFR Part 302.

5 U.S.C. 3320 and 5 CFR Part 302

Administration and Enforcement of Veterans' Preference

Office of Personnel Management (OPM) is charged with prescribing and enforcing regulations for the administration of Veterans' preference in the competitive service in executive agencies. OPM is charged with prescribing regulations for the administration of Veterans' preference in the excepted service in executive agencies. Agencies themselves are generally responsible for enforcement.

5 U.S.C. 1302