

# MSPB Appeals\*

## Appeal Initiated

Employee files appeal (either paper or electronic)

MSPB assigns to an Admin. Judge (AJ), who issues an Acknowledgment Order (AO)

## Initial Agency Submissions

Agency Designation of Rep., Response, and File due w/n 20 days of AO

**Receipt of AO is first notice to Agency of the Appeal**

## Discovery

> Begins w/n 30 days of AO

> Employee and Agency limited to:

- 25 Written questions
- Requests for production of documents
- Requests for admission
- Up to 10 Depositions

> At close of discovery, AJ sets Status Conference

## AJ Actions/Hearing

If the Appellant has not requested a hearing:

- > Judge sets dates for settlement conference and record to close
- > Employee and Agency submit written statement of facts and legal arguments, and all written evidence

If the Appellant has requested a hearing:

- > Judge sets hearing date
- > Employee and Agency submit written statement of facts and legal arguments, witness list, and exhibits
- > Holds prehearing and settlement conferences
- > Hearing is held with witnesses providing live testimony under oath (may be VTC)
- > Judge may request more written briefing

**AJ issues Initial Decision**

## Petition For Review

> File w/n 35 days of Initial Decision

> Other party has 25 days after petition to file a response

> Board can seek amicus curie briefs or allow other non-parties to intervene in the appeal

**Board issues Final Decision**

## Final Decision Review

**If Agency prevails:**

Employee can appeal decision to US Court of Appeals for the Federal Circuit

**If Employee prevails:**

Agency can ask OPM to petition the Board for reconsideration w/n 35 days

## OPM

Only seeks reconsideration where:

- > Board erred in interpreting civil service law, rule, or regulation affecting personnel management, and
- > Board's decision will have a substantial impact on a civil service law, rule, regulation, or policy directive.

OPM can appeal Board decision to the US Court of Appeals for the Federal Circuit

## Court of Appeals

Board's decision will be reversed if:

- > Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- > Obtained without procedures required by law, rule or regulation being followed; or
- > Not based upon substantial evidence

\* Assumes no discrimination claim