Title 5, CFR, Administrative Personnel

Chapter II - Merit Systems Protection Board

Subchapter A - Organization And Procedures

Part 1201—Practices and Procedures

§ 1201.3 Appellate jurisdiction.

(1) Adverse Actions. Removals (terminations of employment after completion of probationary or other initial service period), reductions in grade or pay,suspension for more than 14 days, or furloughs for 30 days or less for cause that will promote the efficiency of the service; an involuntary resignation or retirement is considered to be a removal (5 U.S.C. 7511-7514; 5 CFR part 752,

subparts C and D);

(2) Retirement Appeals. Determinations affecting the rights or interests of an individual under the federal retirement laws (5 U.S.C. 8347(d)(1)-(2) and 8461(e)(1); and 5 U.S.C. 8331 note; 5 CFR parts 831, 839, 842, 844, and 846);

(9) Suitability Action. Action based on suitability determinations, which relate to an individual’s character or conduct that may have an impact on the integrity or efficiency of the service. Suitability actions include the cancellation of eligibility, removal, cancellation of reinstatement eligibility, and debarment. A non-selection or cancellation of eligibility for a specific position based on

an objection to an eligible or a pass over of a preference eligible under 5 CFR 332.406 is not a suitability action. (5 CFR 731.501, 731.203, 731.101(a));

(2) Appeals involving an allegation that the action was based on appellant's whistleblowing or other protected activity. Appeals of actions appealable to the Board under any law, rule, or regulation, in which the appellant alleges that the action was taken because of the appellant's whistleblowing or other protected activity, are governed by part 1209 of this title. The provisions of subparts B, C, E, F, and G of part 1201 apply to appeals and stay requests governed by part 1209 unless other specific provisions are made in that part. The provisions of subpart H of this part regarding awards of attorney fees, compensatory damages, and consequential damages under 5 U.S.C. 1221(g) apply to appeals governed by part 1209 of this chapter.

(i) An appealable action involving discrimination under 5 U.S.C. 2302(b)(1), reduction in grade or removal under 5 U.S.C. 4303, or adverse action under 5 U.S.C. 7512, may be raised under the Board's appellate procedures, or under the negotiated grievance procedures, but not under both;

(ii) An appealable action involving a prohibited personnel practice other than discrimination under 5 U.S.C. 2302(b)(1) may be raised under not more than one of the following procedures:

(iii) Except for actions involving discrimination under 5 U.S.C. 2302(b)(1) or any other prohibited personnel practice, any appealable action that is excluded from the application of the negotiated grievance procedures may be raised only under the Board's appellate procedures.

Subpoenas

§ 1201.81 Requests for subpoenas.

(a) Request. Parties who wish to obtain subpoenas that would require the attendance and testimony of witnesses, or subpoenas that would require the production of documents or other evidence under 5 U.S.C. 1204(b)(2)(A), should file their motions for those subpoenas with the judge. The Board has authority under 5 U.S.C. 1204(b)(2)(A) to issue a subpoena requiring the attendance and testimony of any individual regardless of location and for the production of documentary or other evidence from any place in the United States, any territory or possession of the United States, the Commonwealth of Puerto Rico or the District of Columbia. Subpoenas are not ordinarily required to obtain the attendance of Federal employees as witnesses.