
Are You Representing Yourself At The MSPB?

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While federal employees are generally permitted to represent themselves in their own Merit Systems Protection Board (MSPB) appeal, they should know that the process is very similar to court proceedings and has a number of legal technicalities. If federal employees are representing themselves in an MSPB appeal and dealing with a federal agency attorney, there are some general thoughts that they should keep in mind.

- 1. Retain or Consult With an Attorney Early.** After the MSPB issues an Acknowledgement Order, which sets forth the deadlines and procedures to be followed by the parties, many federal employees will try to seek assistance from an attorney at the last minute when they realize the extensive work that is required to pursue an MSPB appeal or when the federal agency requests to take their depositions or that they provide relevant documentation regarding their case. We strongly recommend that federal employees consult with or retain an attorney prior to filing an MSPB appeal.
- 2. Be Careful When Talking to Human Resources.** Most federal agencies do not assign an attorney to directly interact with a federal employee involved in a proposed removal or suspension case that typically goes to the MSPB. However, there are exceptions to this rule. Occasionally, if an employee hires an attorney during the proposal stage the federal agency may appoint an attorney to represent the federal agency's interests prior to the MSPB appeal stage. Unless a federal employee hires an attorney, his or her case is usually assigned to a federal agency's Human Resources (HR) representative. HR representatives work for the federal agency and its management, not the federal employee. HR representatives will most often not answer a federal employee's questions about a pending disciplinary case. It is important to note that HR representatives will very likely share any information that a federal employee provides to them with management. In other words, a federal employee should not expect information provided to an HR representative to be kept in confidence. Furthermore, if a federal employee does ask HR personnel questions about his or her case, the federal employee may end up providing information that helps the federal agency's position or HR personnel may try to discourage the federal employee from later pursuing an appeal. In short, federal employees should not rely on a federal agency's HR representative or attorney for advice regarding their case.
- 3. Do Not Volunteer Adverse Information to the Agency Attorney.** After an MSPB appeal is filed, an agency attorney is typically assigned to represent the federal agency during the course of the MSPB appeal. Some agency attorneys will be aggressive with unrepresented federal employees and some will take a more reasonable approach. It is critical for a federal employee to remember that an agency attorney's client is the federal agency and its management, not the federal employee. The MSPB is an adversarial process where the job of an agency's attorney is to prove that the federal agency was correct in taking action against the federal employee. When federal employees attempt to interact with an agency

attorney in the course of an MSPB appeal, they should keep in mind that they generally should not freely provide information that might hurt their appeal. It may seem okay at the time to talk openly with the federal agency's attorney, but federal employees should keep in mind that any information learned, if negative, could be used against them later in the process. It is the federal agency attorney's job to represent the federal agency in the MSPB process to the best of his or her ability.

4. **Do Not Miss Deadlines.** Deadlines are important in MSPB cases, whether they are for submitting or responding to discovery requests or for responding to a filing request by the administrative judge. A federal employee will often erroneously assume that a federal agency's attorney will keep him or her updated on deadlines in a case or will be flexible if the federal employee misses a deadline. As a reminder, the federal agency attorney's job is to represent the federal agency, not the federal employee.
5. **Do Not Settle an MSPB Appeal Without Having an Attorney Review the Agreement.** It is important for a federal employee to have his or her own attorney review a proposed MSPB settlement agreement before signing. The federal employee should obtain an assessment as to the strengths of his or her case and whether the settlement agreement is reasonable and adequately protects his or her rights. If the federal employee signs a settlement agreement and then has second thoughts later, it can be very difficult to undo a settlement agreement that already has been signed. A federal employee should obtain legal advice before he or she signs an MSPB settlement agreement.

Many federal employees initially represent themselves in a Merit Systems Protection Board (MSPB) appeal and later decide to retain an attorney when the appeal becomes complicated. As a general rule, it is important for a federal employee to hire an attorney when dealing with a federal agency attorney in an MSPB appeal. Our law firm represents federal employees before the MSPB and can be contacted at www.berrylegal.com or by telephone at (703) 668-0070. Please also visit and like our Facebook page at www.facebook.com/BerryBerryPllc.

Attorneys

John V. Berry

Practice Areas

Merit Systems Protection Board (MSPB)