

## Merit Systems Protection Board

## §1201.128

after the date of service, within 30 days after the date the filing party received the recommended decision.

(3) The parties may file replies to exceptions within 25 days after the date of service of the exceptions, as that date is determined by the certificate of service.

(4) No additional evidence will be accepted with a party's exceptions or with a reply to exceptions unless the party submitting it shows that the evidence was not readily available before the administrative law judge closed the record.

(5) The Board will consider the recommended decision of the administrative law judge, together with any exceptions and replies to exceptions filed by the parties, and will issue a final written decision.

[62 FR 48451, Sept. 16, 1997, as amended at 63 FR 42686, Aug. 11, 1998]

### §1201.126 Final decisions.

(a) In any action to discipline an employee, except as provided in paragraphs (b) or (c) of this section, the administrative law judge, or the Board on petition for review, may order a removal, a reduction in grade, a debarment (not to exceed five years), a suspension, a reprimand, or an assessment of civil penalty not to exceed \$1,100. 5 U.S.C. 1215(a)(3).

(b) In any action in which the administrative law judge, or the Board on petition for review, finds under 5 U.S.C. 1505 that a State or local government employee has violated the Hatch Political Activities Act and that the employee's removal is warranted, the administrative law judge, or the Board on petition for review, will issue a written decision notifying the employing agency and the employee that the employee must be removed and not reappointed within 18 months of the date of the decision. If the agency fails to remove the employee, or if it reappoints the employee within 18 months, the administrative law judge, or the Board on petition for review, may order the Federal entity administering loans or grants to the agency to withhold funds from the agency as provided under 5 U.S.C. 1506.

(c) In any Hatch Act action in which the administrative law judge, or the

Board on petition for review, finds that a Federal or District of Columbia government employee has violated 5 U.S.C. 7324 and that the violation warrants removal, the administrative law judge, or the Board on petition for review, will issue a written decision ordering the employee's removal. If the administrative law judge determines that removal is not warranted, the judge will issue a recommended decision under §1201.125(c)(1) of this part. If the Board finds by unanimous vote that the violation does not warrant removal, it will impose instead a penalty of not less than 30 days suspension without pay. If the Board finds by majority vote that the violation warrants removal, it will order the employee's removal.

### §1201.127 Judicial review.

(a) An employee subject to a final Board decision imposing disciplinary action under 5 U.S.C. 1215 may obtain judicial review of the decision in the United States Court of Appeals for the Federal Circuit, except as provided under paragraph (b) of this section. 5 U.S.C. 1215(a)(4).

(b) A party aggrieved by a determination or order of the Board under 5 U.S.C. 1505 (governing alleged violations of the Hatch Political Activities Act by State or local government employees) may obtain judicial review in an appropriate United States district court. 5 U.S.C. 1508.

### SPECIAL COUNSEL CORRECTIVE ACTIONS

### §1201.128 Filing complaint; serving documents on parties.

(a) *Place of filing.* A Special Counsel complaint seeking corrective action under 5 U.S.C. 1214 must be filed with the Clerk of the Board. After the complaint has been assigned to a judge, subsequent pleadings must be filed with the Board office where the judge is located.

(b) *Initial filing and service.* The Special Counsel must file two copies of the complaint, together with numbered and tabbed exhibits or attachments, if any, and a certificate of service listing the respondent agency or the agency's representative, and each person on whose behalf the corrective action is brought. The certificate of service