

Merit Systems Protection Board

§ 1209.6

(7) A reemployment;

(8) A performance evaluation under chapter 43 of title 5, United States Code;

(9) A decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other personnel action;

(10) A decision to order psychiatric testing or examination; or

(11) Any other significant change in duties, responsibilities, or working conditions.

(b) *Whistleblowing* is the disclosure of information by an employee, former employee, or applicant that the individual reasonably believes evidences a violation of law, rule, or regulation, gross mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health or safety. It does not include a disclosure that is specifically prohibited by law or required by Executive order to be kept secret in the interest of national defense or foreign affairs, unless such information is disclosed to the Special Counsel, the Inspector General of an agency, or an employee designated by the head of the agency to receive it.

(c) *Contributing factor* means any disclosure that affects an agency's decision to threaten, propose, take, or not take a personnel action with respect to the individual making the disclosure.

(d) *Clear and convincing evidence* is that measure or degree of proof that produces in the mind of the trier of fact a firm belief as to the allegations sought to be established. It is a higher standard than "preponderance of the evidence" as defined in 5 CFR 1201.56(c)(2).

[55 FR 28592, July 12, 1990, as amended at 62 FR 17048, Apr. 9, 1997]

Subpart B—Appeals

§ 1209.5 Time of filing.

(a) *Individual right of action appeals.* The appellant must seek corrective action from the Special Counsel before appealing to the Board. Where the appellant has sought corrective action, the time limit for filing an appeal with

the Board is governed by 5 U.S.C. 1214(a)(3). Under that section, an appeal must be filed:

(1) No later than 65 days after the date of issuance of the Office of Special Counsel's written notification to the appellant that it was terminating its investigation of the appellant's allegations or, if the appellant shows that the Special Counsel's notification was received more than 5 days after the date of issuance, within 60 days after the date the appellant received the Special Counsel's notification; or,

(2) If the Office of Special Counsel has not notified the appellant that it will seek corrective action on the appellant's behalf within 120 days of the date of filing of the request for corrective action, at any time after the expiration of 120 days.

(b) *Otherwise appealable action appeals.* The appellant may choose either to seek corrective action from the Special Counsel before appealing to the Board or to file the appeal directly with the Board. If the appellant seeks corrective action from the Special Counsel, the time limit for appealing is governed by paragraph (a) of this section. If the appellant appeals directly to the Board, the time limit for filing is governed by 5 CFR 1201.22(b).

(c) *Appeals after a stay request.* Where an appellant has filed a request for a stay with the Board without first filing an appeal of the action, the appeal must be filed within 30 days after the date the appellant receives the order ruling on the stay request. Failure to timely file the appeal will result in the termination of any stay that has been granted unless a good reason for the delay is shown.

[55 FR 28592, July 12, 1990, as amended at 59 FR 31110, June 17, 1994; 62 FR 59993, Nov. 6, 1997]

§ 1209.6 Content of appeal; right to hearing.

(a) *Content.* Only an appellant, his or her designated representative, or a party properly substituted under 5 CFR 1201.35 may file an appeal. Appeals may be in any format, including letter form, but must contain the following:

(1) The nine (9) items or types of information required in 5 CFR 1201.24 (a)(1) through (a)(9);