

U.S. Merit Systems Protection Board
Information Sheet
Probationary Terminations

Purpose

The purpose of this information sheet is to provide general information. It does not represent an official statement or advisory opinion issued or approved by the Board and is not intended to provide legal advice or to be cited as legal authority. Instead, it is intended only to help the public become familiar with the Board and its procedures. In all instances, statutes, regulations, and case law control with respect to the matters discussed generally here.

Who is serving a probationary period?

An individual serving a probationary or trial period is generally someone serving in his or her first year or first two years of a new appointment. The length of the probation or trial period depends on whether the position is in the competitive service or the excepted service.

Do individuals serving a probationary period have a right to appeal their termination to the Board?

Individuals serving a probationary or trial period generally do not have a statutory right to appeal their termination to the Board. See [5 U.S.C. § 7511\(a\)\(1\)](#) (defining who is an “employee” for purposes of Board adverse action appeal rights). (But see next section for discussion of whether competitive service employees may have a *regulatory* Board appeal right.)

In the competitive service, the probationary period is one year of service. However, a competitive service individual serving a probationary period is nevertheless entitled to appeal an adverse action to the Board if he or she “has completed 1 year of current continuous service under other than a temporary appointment limited to 1 year or less.” Probationary individuals in the competitive service also have limited appeal rights to the Board by regulation. [5 C.F.R. § 315.806](#).

In the excepted service, a preference-eligible veteran must complete “1 year of current continuous service in the same or similar positions” in order to have appeal rights. A nonpreference eligible in the excepted service must complete “2 years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to 2 years or less.”

What regulatory rights are provided to individuals in the competitive service who are terminated during their probationary period?

The regulatory rights will depend on whether the individual was terminated for conditions arising prior to, or subsequent to, the appointment. (In addition, individuals serving a probationary period on initial appointments to a supervisory or managerial position are subject to 5 C.F.R. part 315, subpart I, and their rights are not discussed in this Information Sheet.)

If the agency proposes to terminate an individual in whole or in part for conditions arising *before* his or her appointment, the individual is entitled to notice of the reasons for the proposed termination, a reasonable time to answer the proposal notice and to furnish supporting affidavits, and written notice of the agency's decision. That decision will include the reasons for the action and notice of the right to file an appeal with the Board. 5 C.F.R. §§ [315.805](#) and [315.806](#). The individual may appeal on the grounds that the termination was not effected in accordance with the procedural requirements of § 315.805.

If the agency terminates the individual for reasons arising *during* the probationary period, the individual is entitled to a written notice stating the basis and the effective date of the termination. [5 C.F.R. § 315.804](#). However, the Board's jurisdiction over such a termination is limited to allegations that it was based on partisan political reasons or marital status. 5 C.F.R. § 315.806(b). In determining jurisdiction, the Board will consider only allegations of marital status or partisan political discrimination and may not decide whether the stated reasons why the agency terminated the appointment were correct.

Only when an individual establishes jurisdiction under [5 C.F.R. §§ 315.804](#) or [315.805](#) can the Board also consider discrimination based on race, color, religion, sex, national origin, age, or disability. 5 C.F.R. § 315.806(d).

There are no regulatory appeal rights for individuals in the excepted service terminated during their trial period unless they are serving in the first year of a Veterans' Recruitment Appointment (VRA). VRA appointees have the same regulatory rights of appeal to the Board as individuals in the competitive service terminated during probation.

What other review rights does an individual serving a probationary period have?

An individual serving a probationary or trial period may have the right to file an Equal Employment Opportunity (EEO) complaint with their employing agency's EEO office, a grievance under the terms of any applicable collective bargaining agreement or employing agency policy, or a request for corrective action with the Office of Special Counsel. The type of complaint or appeal that is filed first may

constitute an “election of remedy” that may limit or preclude other review options. See [5 C.F.R. § 1201.3\(c\)\(2\)](#) (choice of procedures).

Who should an individual terminated during a probationary period contact with questions about MSPB procedures?

- (1) The Regional Office in which the appeal will be filed or is pending.
- (2) The Office of the Clerk of the Board at (202) 653-7200 or mspb@mspb.gov.
- (3) The Board’s website at www.mspb.gov.
- (4) The individual’s own attorney or non-attorney representative.