

Merit Systems Protection Board

§ 1209.6

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);

(2) Where the appellant first sought corrective action from the Special Counsel, evidence that the appeal is timely filed;

(3) The name(s) and position(s) held by the employee(s) who took the action(s), and a chronology of facts concerning the action(s);

(4) A description of each disclosure evidencing whistleblowing as defined in § 1209.4(b) of this part; and

(5) Evidence or argument that:

(i) The appellant was or will be subject to a personnel action as defined in § 1209.4(a) of this part, or that the agency has threatened to take or not to take such a personnel action, together with specific indications giving rise to the appellant’s apprehensions; and

(ii) The personnel action was or will be based wholly or in part on the whistleblowing disclosure, as described in § 1209.4(b) of this part.

(6) An appellant who first sought corrective action from the Special Counsel may satisfy the requirements of paragraphs (a)(3) through (a)(5) of this section by filing with the appeal a copy of *Part 2: Reprisal For Whistleblowing* of the complaint form submitted to the Office of Special Counsel (Form OSC-11, *Complaint of Possible Prohibited Personnel Practice or Other Prohibited Activity*, Rev. 8/00), together with a copy of any continuation sheet with answers to Part 2 questions filed with the Office of Special Counsel, and any supplement to Part 2 of the original complaint filed with the Office of Special Counsel or completed by the Office of Special Counsel and furnished to the appellant.