

## Merit Systems Protection Board

## § 1208.2

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate entity.

[70 FR 24293, May 9, 2005, as amended at 73 FR 6834, Feb. 6, 2008]

§§ 1207.171–1207.999 [Reserved]

### PART 1208—PRACTICES AND PROCEDURES FOR APPEALS UNDER THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT AND THE VETERANS EMPLOYMENT OPPORTUNITIES ACT

#### Subpart A—Jurisdiction and Definitions

Sec.

- 1208.1 Scope.
- 1208.2 Jurisdiction.
- 1208.3 Application of 5 CFR part 1201.
- 1208.4 Definitions.

#### Subpart B—USERRA Appeals

- 1208.11 Choice of procedure under USERRA; exhaustion requirement.
- 1208.12 Time of filing.
- 1208.13 Content of appeal; request for hearing.
- 1208.14 Representation by Special Counsel.
- 1208.15 Remedies.
- 1208.16 Appeals under another law, rule, or regulation.

#### Subpart C—VEOA Appeals

- 1208.21 VEOA exhaustion requirement.
- 1208.22 Time of filing.
- 1208.23 Content of appeal; request for hearing.
- 1208.24 Election to terminate MSPB proceeding.
- 1208.25 Remedies.
- 1208.26 Appeals under another law, rule, or regulation.

AUTHORITY: 5 U.S.C. 1204(h), 3330a, 3330b; 38 U.S.C. 4331.

SOURCE: 65 FR 5412, Feb. 4, 2000, unless otherwise noted.

#### Subpart A—Jurisdiction and Definitions

##### § 1208.1 Scope.

This part governs appeals filed with the Board under the provisions of 38

U.S.C. 4324, as enacted by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Public Law 103-353, as amended, or under the provisions of 5 U.S.C. 3330a, as enacted by the Veterans Employment Opportunities Act of 1998 (VEOA), Public Law 105-339. With respect to USERRA appeals, this part applies to any appeal filed with the Board on or after October 13, 1994, without regard as to whether the alleged violation occurred before, on, or after October 13, 1994. With respect to VEOA appeals, this part applies to any appeal filed with the Board which alleges that a violation occurred on or after October 31, 1998.

##### § 1208.2 Jurisdiction.

(a) *USERRA*. Under 38 U.S.C. 4324, a person entitled to the rights and benefits provided by chapter 43 of title 38, United States Code, may file an appeal with the Board alleging that a Federal agency employer or the Office of Personnel Management has failed or refused, or is about to fail or refuse, to comply with a provision of that chapter (other than a provision relating to benefits under the Thrift Savings Plan for Federal employees). In general, the provisions of chapter 43 of title 38 that apply to Federal employees guarantee various reemployment rights following a period of service in a uniformed service, provided the employee satisfies the requirements for coverage under that chapter. In addition, chapter 43 of title 38 prohibits discrimination based on a person's service—or application or obligation for service—in a uniformed service (38 U.S.C. 4311). This prohibition applies with respect to initial employment, reemployment, retention in employment, promotion, or any benefit of employment.

(b) *VEOA*. Under 5 U.S.C. 3330a, a preference eligible who alleges that a Federal agency has violated his rights under any statute or regulation relating to veterans' preference may file an appeal with the Board, provided that he has satisfied the statutory requirements for first filing a complaint with the Secretary of Labor and allowing the Secretary at least 60 days to attempt to resolve the complaint.