

Federal Disability Retirement – Know Your Time Limit to Appeal!
Appealing an OPM decision to the MSPB

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If the Office of Personnel Management (OPM) denies a federal employee's disability retirement application on reconsideration, the claimant has a short time to appeal. Currently, the disability applicant generally has 30 days to file a Merit Systems Protection Board (MSPB) appeal after the date of receipt of the agency's decision. *See 5 CFR 1201.22.*¹

The time period for filing an appeal begins to run the day after the date of receipt of the denial decision. If the 30-day deadline falls on a Saturday, Sunday, or Federal holiday, the filing period will include the first workday after that date.

The appeal must be timely filed with the appropriate regional or field office servicing your residential area and can be filed by five different means as follows:

- electronically online at www.mspb.gov;
- by personal delivery;
- facsimile;
- mail; or
- commercial delivery (such as UPS or Federal Express).

If you file electronically, the filing date is the date of electronic submission. If you file by personal delivery, the filing date is the date of receipt. If you file by fax, the filing date is the date of the fax. The date of filing by mail is determined by the postmark date, if legible, and if not legible five days prior to receipt. If you file by commercial delivery, the filing date is the date the appeal was delivered or taken to the commercial delivery service. *See generally 5 CFR 1201.4(l).*

OPM sends out the decision by certified mail. Therefore, OPM can prove the date of receipt. Do not confuse this time scheme with the older OPM scheme that provided for different deadlines and procedures to appeal. *See generally 5 CFR 1201.22 (1997).* Also, it is important not to confuse this appeal scheme with the social security scheme, which allows for 60 days to appeal.

If this 30-day deadline is missed the only way an appeal will be accepted is if the claimant is able to show good cause for waiver of the timely filing requirement. The claimant must show the exercise of due diligence or ordinary prudence under the particular circumstances

¹ This appeal process is after a claimant has filed a request for reconsideration of OPM's initial decision and OPM has issued a final written decision denying the disability retirement claim. A request for reconsideration to OPM must be received by OPM within 30 days after the receipt of the initial decision.
5 CFR 831.109 (e) (2).

of the case. *Allen v. USPS*, 44 MSPR, 369 (1990), aff'd, 918 F.2d 187 (*Fed. Cir.* 1990), cert denied, 111 S.Ct. 1423 (1991).

For example, good cause has been found where:

- Mental/psychological problems caused the delay; *See Young v. OPM*, 7 MSPR 33 (1981); *Dutter v. OPM*, 23 MSPR 393 (1984);
- Emergency child care caused the deadline to be missed; *See Dow v. OPM* 66 MSPR 21 (1994).; and
- Delay of mail delivery. *See Moran v. OPM*, 49 MSPR 331 (1991) , *Salugo v. OPM*, 51 MSPR 381 (1991) (mail service to remote village); *Lapenas v. OPM*, 44 MSPR 303 (1990) and *Alo v. OPM*, 45 MSPR 571 (1990) (both cases involving mail service to the Philippines).

The Merit Systems Protection Board has accepted these reasons, among others, as good cause. The length of the delay is strongly considered by the MSPB. In other words, the amount of time lapsed between the filing deadline and the actual time of appeal is important to the MSPB when deciding whether or not to accept the appeal and find good cause for tardiness. There are also other factors considered when determining whether a good cause waiver should be granted. *See Alonzo v. Department of the Airforce*, 4 MSPR 180, 185 (1980). Generally, however, these challenges are difficult to mount and are often rejected.

Thus, it is always recommended that a claimant keep a close eye on the calendar in order to timely file an appeal. The claimant should carefully read OPM's final denial decision and file the appeal with the correct MSPB regional or field office. It is also recommended that applicants seek advice and representation from an attorney on these vitally important claims.

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