

MIXED CASE COMPLAINTS AND APPEALS - 29 C.F.R. § 1614.302

A. Definitions

A "mixed case complaint" is a complaint of employment discrimination filed with a federal agency based on race, color, religion, sex, national origin, age, disability, or reprisal related to or stemming from an action that may be appealed to the MSPB. The complaint may contain only a claim of employment discrimination or it may contain additional non-discrimination claims that the MSPB has jurisdiction to address. A "mixed case appeal" is an appeal filed directly with the MSPB that alleges that an appealable agency action was effected, in whole or in part, because of discrimination on the basis of race, color, religion, sex, national origin, disability, age, or reprisal. There is no right to a hearing before an EEOC Administrative Judge on a mixed-case complaint.

B. Procedures

EEOC regulations provide for processing discrimination complaints on claims that are otherwise appealable to the MSPB. Two determinations must be made to decide if the mixed case regulations apply. First, the employee must have standing to file such an appeal with the MSPB. Second, the claim that forms the basis of the discrimination complaint must be appealable to the MSPB.

1. Standing

- a. The following employees generally have a right to appeal to the MSPB and, therefore, to initiate a mixed case complaint or appeal:⁽¹⁾

- (1) competitive service employees not serving a probationary or trial period under an initial appointment;
- (2) career appointees to the Senior Executive Service;
- (3) non-competitive service veterans preference eligible employees with one or more years of current continuous service (e.g., postal employees and attorneys with veterans preference); and
- (4) non-preference eligible excepted service employees who have completed their probationary period or with two or more years of current continuous service (e.g., attorneys).

- b. The following employees generally do not have a right to appeal to the MSPB:

- (1) probationary employees (but see 5 C.F.R. § 315.806, allowing appeals alleging discrimination based on party affiliation, marital status, procedural deficiencies);
- (2) certain non-appropriated fund activity employees;⁽²⁾
- (3) employees serving under a temporary appointment limited to one year or less; and