

- (4) employees of the Central Intelligence Agency, the General Accounting Office, the United States Postal Service, the Postal Rate Commission, the Panama Canal Commission, the Tennessee Valley Authority, and the Federal Bureau of Investigation.

2. Appealable Actions

- a. Most appealable actions fall into the following six categories:

- (1) reduction in grade or removal for unacceptable performance;
- (2) removal, reduction in grade or pay, suspension for more than fourteen (14) days, or furlough for thirty (30) days or less for cause that will promote the efficiency of the service;
- (3) separation, reduction in grade, or furlough for more than 30 days, when the action was effected because of a reduction-in-force;
- (4) reduction-in-force action affecting a career appointee in the Senior Executive Service;
- (5) reconsideration decision sustaining a negative determination of competence for a general schedule employee; and
- (6) disqualification of an employee or applicant because of a suitability determination.

- b. See Appendix I for a more complete listing of appealable actions.

3. Election to Proceed is Required

- a. The regulations provide that a covered individual may raise claims of discrimination in a mixed case either as a direct appeal to the MSPB or as a mixed-case EEO complaint with the agency, but not both. 29 C.F.R. § 1614.302(b).
- b. Whatever action the individual files first is considered an election to proceed in that forum. § 1614.302(b). Filing a formal EEO complaint constitutes an election to proceed in the EEO forum. Contacting an EEO Counselor or receiving EEO counseling does **not** constitute an election.
- c. Where an aggrieved person files an MSPB appeal and timely seeks counseling, counseling may continue pursuant to § 1614.105, at the option of the parties. In any case, counseling must be terminated with notice of rights pursuant to § 1614.105(d), (e), or (f).

4. Procedures for Handling Dual Filing

- a. Where the agency does not dispute MSPB jurisdiction

- (1) If an individual files a mixed case appeal with the MSPB before filing a mixed case complaint with the agency, and the agency does not