(2) A copy of a motion for initiation of an addendum proceeding to decide a request for consequential damages or compensatory damages must be served on the other parties or their representatives at the time of filing. A party may file a pleading responding to the motion within the time limit established by the judge.

(f) *Hearing; applicability of subpart B.* The judge may hold a hearing on a request for consequential damages or compensatory damages and may apply appropriate provisions of subpart B of this part to the addendum proceeding.

(g) *Initial decision; review by the Board.* The judge will issue an initial decision in the addendum proceeding, which shall be subject to the provisions for a petition for review by the Board under subpart C of this part.

(h) *Request for damages first made in proceeding before the Board.* Where a request for consequential damages or compensatory damages is first made on petition for review of a judge's initial decision on the merits and the Board waives the time limit for making the request in accordance with paragraph (a)(2) of this section, or where the request is made in a case where the only MSPB proceeding is before the 3-member Board, including, for compensatory damages only, a request to review an arbitration decision under 5 U.S.C. 7121(d), the Board may:

(1) Consider both the merits and the request for damages and issue a final decision;

(2) Remand the case to the judge for a new initial decision, either on the request for damages only or on both the merits and the request for damages; or

(3) Where there has been no prior proceeding before a judge, forward the request for damages to a judge for hearing and a recommendation to the Board, after which the Board will issue a final decision on both the merits and the request for damages.

(i) *EEOC review of decision on compensatory damages.* A final decision of the Board on a request for compensatory damages pursuant to the Civil Rights Act of 1991 shall be subject to review by the Equal Employment Opportunity Commission as provided under subpart E of this part.

§ 1201.205 Judicial review.

A final Board decision under this subpart is subject to judicial review as provided under 5 U.S.C. 7703.

Dated: July 28, 1998.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 98–20447 Filed 7–31–98; 8:45 am]

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MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1209

Practices and Procedures for Appeals and Stay Requests of Personnel Actions Allegedly Based on Whistleblowing

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) is amending its rules of practice and procedure for whistleblower appeals to implement the provisions of Public Law 103–424 (MSPB and Office of Special Counsel reauthorization of 1994) that: Added a new personnel action and amended another in the statutory provisions governing prohibited personnel practices; and added a requirement that the Board refer its findings to the Special Counsel when it determines in a whistleblower proceeding that a current Federal employee may have committed a prohibited personnel practice. The Board is also amending its rules of practice and procedure for whistleblower appeals to include a cross-reference to subpart H of part 1201 regarding awards of attorney fees and consequential damages. The purpose of these amendments is to provide guidance to the parties to MSPB cases and their representatives regarding the new and amended personnel actions, to refer parties and their representatives to subpart H of part 1201 for the procedures governing requests for attorney fees and consequential damages, and to provide public notice of the requirement that the Board refer certain prohibited personnel practice findings to the Special Counsel. The Board is implementing other provisions of Public Law 103–424 through an amendment to its rules at 5 CFR part 1201, which is being published simultaneously with this amendment.

EFFECTIVE DATE: August 3, 1998.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

SUPPLEMENTARY INFORMATION: The Board previously published an interim rule to: Implement the provisions of Public Law 103–424 (MSPB and Office of Special Counsel reauthorization of 1994) that added a new personnel action and amended another in the statutory provisions governing prohibited personnel practices and added a requirement that the Board refer its findings to the Special Counsel when it determines in a whistleblower proceeding that a current Federal employee may have committed a prohibited personnel practice, and to include a cross-reference to subpart H of part 1201 regarding awards of attorney fees and consequential damages (62 FR 17047, April 9, 1997). The interim rule requested public comments and allowed 60 days, until June 9, 1997, for receipt of such comments.

Comments were received from one Federal agency suggesting that the Board amend part 1209 to impose a time limit for bringing an action to the Special Counsel as a pre-condition for later bringing an individual right of action (IRA) appeal to the Board. Although the recommendation does not address any of the changes made by the interim rule, the Board will address it.

The Board has concluded that imposing such a time limit would not be a proper exercise of its regulatory authority. That authority is limited to matters within the Board's jurisdiction (5 U.S.C. 1204(h) and 7701(k), and 38 U.S.C. 4331).

Under 5 U.S.C. 7121(g)(2), an employee who has been affected by a prohibited personnel practice (other than discrimination) may elect among three specified remedies: (1) An appeal to MSPB under 5 U.S.C. 7701, (2) a grievance under a negotiated grievance procedure, or (3) an action under subchapters II and III of chapter 12 of title 5. Subchapter II concerns Special Counsel actions (which may lead to corrective action complaints before the Board), and subchapter III covers IRA appeals. Because the conjunctive is used with regard to the Special Counsel and IRA processes, it appears that Congress intended, without limits other than those specified, to allow complainants to go to the Special Counsel and bring IRA appeals to the Board on the same matter. By limiting the matters that can be brought to the Board under subchapter III to only ''timely-raised'' matters brought to OSC under subchapter II, as suggested by the commenter, the Board would be adding a limitation to the IRA appeal choice that is not contained in the statute.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

Accordingly, the Board adopts as a final rule, without change, its interim rule published at 62 FR 17047, April 9, 1997.

Dated: July 27, 1998.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 98–20448 Filed 7–31–98; 8:45 am]

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