



## Veterans' Preference Act of 1944—still relevant today

**T**he Veterans' Preference Act does not benefit veterans solely in terms of hiring; it also guarantees additional rights to veterans in the discipline process.

Historically, Congress has used its power as an employer to shape public policy. One such policy is the recognition that our nation owes a debt to those who face the horrors of war in defense of our freedom and values. The government tries to make veterans' return from military service to civilian life an easier transition by offering veterans preferential treatment in federal employment.

In 1865, following the Civil War, Congress issued a resolution urging that disabled veterans "be preferred for appointment to civil offices." This action was expanded by a 1912 law that expressed, through a series of presidential executive orders and Civil Service Commission regulations, an absolute retention preference to any honorably discharged service member with good performance ratings. This meant that the veteran was preferred for job retention even over non-veteran federal employees with more seniority or higher performance ratings.

The culmination of these historical preferences and protections was the Veterans' Preference Act of 1944, which originally granted war veterans certain notice and appeal rights in matters of employee discipline (these rights have been subsequently expanded to include additional protected veterans). According to the Act, a veteran could not be fired, suspended, demoted or reduced in pay without good cause and without first receiving written notice of the allegations, an opportunity to respond, and 30 days' notice. The veteran then could appeal the termination to the Civil Service Commission. Veterans were the first group of federal employees to enjoy these rights. Non-veterans did not acquire them until President Kennedy's Executive Order 10987 in 1962.

The veterans' appeal through the Civ-

il Service Commission is now through the Merit Systems Protection Board (MSPB). It should be noted that **NALC does not** represent letter carriers in the MSPB appeals process.

The Postal Service has incorporated this veterans' appeal into the *Employee and Labor Relations Manual (ELM)*, Chapter 6, which states:

### 666.23 Adverse Action Appeals to the Merit Systems Protection Board

All employees eligible for veterans' preference and certain other nonbargaining unit employees with one year of current continuous service in the same or similar position may appeal removals, reductions in grade or pay, suspensions of more than 14 days, or furloughs of 30 days or less. The appeal must be made to the Merit Systems Protection Board (MSPB) within 30 days of the effective date of the action. Preference eligible employees may also appeal reduction-in-force (RIF) actions to the MSPB.

You will find this additional veterans protection also included in the National Agreement in Article 16—Discipline Procedure, which states in relevant part:

### Article 16, Section 9. Veterans' Preference

A preference eligible is not hereunder deprived of whatever rights of appeal are applicable under the Veterans' Preference Act ...

So, as a veteran, what does this really mean? In very simple terms, it means you have two avenues to appeal a disciplinary action of more than 14 days. You have the Article 15 grievance procedure and/or you can appeal through MSPB. However, while you may appeal the adverse action through both there are limits. Article 16, Section 9 continues and states:

...If the employee appeals under the Veterans' Preference Act, however, the time limits for appeal to arbitration and the normal contractual arbitration scheduling procedures are not to be delayed as a consequence of that appeal; if there is an MSPB appeal pending as of the date the arbitration is scheduled by the parties, the

grievant waives access to the grievance-arbitration procedure beyond Step B.

In other words, as a veterans' preference employee, you may file an initial appeal in a grievance and through MSPB, but you must declare which avenue of appeal you choose by the date your Article 15 grievance is scheduled for arbitration. This can be found in the *Joint Contract Administration Manual (JCAM)* on page 16-10, which states:

**MSPB Dual Filings.** The Veterans' Preference Act guarantees "preference eligible" employees certain special rights concerning their job security. (Federal law defines a "preference eligible" veteran at Title 5 United States Code Section 2108; see EL-312, Section 483). A preference eligible employee may file both a grievance and an MSPB appeal on a removal or suspension of more than fourteen days. **However, Article 16.9 provides that an employee who exercises appeal rights under the Veterans' Preference Act waives access to arbitration when they have an MSPB appeal pending as of the date the grievance is scheduled for arbitration by the parties. The date of the arbitration scheduling letter is considered "the date the arbitration is scheduled by the parties" for the purposes of Article 16.9.** [Emphasis added.]

That is why item "12.a" appears on PS Form 8190—the USPS-NALC Joint Step A Grievance Form. It asks the question, "Companion MSPB Appeal?" This is to put all grievance handlers on notice that the aggrieved employee has filed both a grievance and an MSPB appeal. While this question should be answered on the 8190 and all parties should be aware of the dual filing, it is each individual's responsibility to adhere to the time frame to declare which appeal process they will ultimately use.

The Veterans' Preference Act has been established to protect veterans' special rights to hiring preference and retention. When it is needed, it is a strong protection for those who have sacrificed to protect our nation.