



Preference-eligible veterans— Discipline process and MSPB

Through the Veterans' Preference Act of 1944, certain military veterans can qualify to be preference-eligible employees of the Postal Service. To qualify, veterans must be discharged under honorable conditions and meet the criteria for one of the preference categories. Veterans must have either sustained a service-connected disability, served during the specific periods listed in *Handbook EL-312, Employment and Placement*, or qualified under the "sole survivorship discharge" criteria in Section 483 of *Handbook EL-312*.

The Veterans' Preference Act of 1944 was originally intended for war veterans; however, this has been subsequently expanded to protect other employees with veterans' preference, provided they have served one year of current, continuous service. A break in service of one workday during the year disqualifies an employee from these rights. This means city carrier assistants would not be protected unless they worked at least 365 days without a break in service.

Federal law grants preference-eligible employees the right to appeal adverse actions, including suspensions of more than 14 days and removals, to the Merit Systems Protection Board (MSPB). Although a preference-eligible employee has this benefit, it does not affect the rights granted to them in the National Agreement, as stated in Article 16, Section 9:

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.

In accordance with this language, a preference-eligible employee may file a grievance under Article 15 of the

National Agreement and/or an appeal through the MSPB. Although a preference-eligible veteran may appeal the disciplinary action in both forums, a choice between them must be made by the date the Article 15 grievance is scheduled for arbitration.

Page 16-10 of the USPS-NALC *Joint Contract Administration Manual (JCAM)* explains dual filing as follows:

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.

As a grievance progresses through the Dispute Resolution Process, it is often handled by more than one designee. To notify each grievance handler, Item 12.a on the PS Form 8190, the USPS-NALC Joint Step A Grievance Form, asks if there is a companion MSPB appeal. Although this should be answered by the shop steward and all parties should be aware of the dual filing, it is still the grievant's responsibility to adhere to the time limit to declare which appeal process they will pursue.

Veterans should note that the MSPB appeal process is not part of the contractual grievance procedure,

so NALC does not represent employees in MSPB appeals. Information on appeal rights and time limits for filing an MSPB appeal are found in Sections 1201.21 and 1201.22 of Title 5 of the Code of Federal Regulations (CFR):

1201.21 Notice of appeal rights.

When an agency issues a decision notice to an employee on a matter that is appealable to the Board, the agency must provide the employee with the following:

- (a) Notice of the time limits for appealing to the Board, the requirements of § 1201.22(c), and the address of the appropriate Board office for filing the appeal;
- (b) A copy, or access to a copy, of the Board's regulations;
- (c) A copy, or access to a copy, of the MSPB appeal form available at the Board's Web site ([http:// www.mspb.gov/](http://www.mspb.gov/)), and
- (d) Notice of any right the employee has to file a grievance or seek corrective action under subchapters II and III of 5 U.S.C. chapter 12, including:

- (1) Whether the election of any applicable grievance procedure will result in waiver of the employee's right to file an appeal with the Board;
- (2) Whether both an appeal to the Board and a grievance may be filed on the same matter and, if so, the circumstances under which proceeding with one will preclude proceeding with the other, and specific notice that filing a grievance will not extend the time limit for filing an appeal with the Board;
- (3) Whether there is any right to request Board review of a final decision on a grievance in accordance with § 1201.155 of this part; and
- (4) The effect of any election under 5 U.S.C. 7121(g), including the effect that seeking corrective action

under subchapters II and III of 5 U.S.C. chapter 12 will have on the employee's appeal rights before the Board.

(e) Notice of any right the employee has to file a complaint with the Equal Employment Opportunity Commission or to grieve allegations of unlawful discrimination, consistent with the provisions of 5 U.S.C. 7121(d) and 29 CFR 1614.301 and 1614.302.

(f) The name or title and contact information for the agency official to whom the Board should send the Acknowledgment Order and copy of the appeal in the event the employee files an appeal with the Board. Contact information should include the official's mailing address, email address, telephone and fax numbers.

[As amended at 77 FR 62364, Oct. 12, 2012; 78 FR 21518, Apr. 11, 2013]

1201.22 Filing an appeal and responses to appeals.

(a) Place of filing. Appeals, and responses to those appeals, must be filed with the appropriate Board regional or field office. See § 1201.4(d) of this part.

(b) Time of filing. (1) Except as provided in paragraph (b)(2) of this section, an appeal must be filed no later than 30 days after the effective date, if any, of the action being appealed, or 30 days after the date of the appellant's receipt of the agency's decision, whichever is later.

Additional information regarding the MSPB appeal process is available at mspb.gov.

In most cases, once a disciplinary removal grievance has reached impasse at Step B, the Postal Service will remove the employee from a pay status until the case is decided by an arbitrator. These employees are then required to make reasonable efforts to obtain other employment to recover back pay in

the event the removal is overturned. However, this is not always the case for preference-eligible veterans. The instructions of the PS Form 8038, Employee Statement to Recover Back Pay, clarify that a preference-eligible veteran who appeals the action through MSPB is not required to seek other employment.

Preference-eligible veterans also receive an additional, informal benefit regarding emergency suspensions imposed in accordance with Article 16, Section 7 of the National Agreement, which states:

An employee may be immediately placed on an off-duty status (without pay) by the Employer, but remain on the rolls where the allegation involves intoxication (use of drugs or alcohol), pilferage, or failure to observe safety rules and regulations, or in cases where retaining the employee on duty may result in damage to U.S. Postal Service property, loss of mail or funds, or where the employee may be injurious to self or others. The employee shall remain on the rolls (non-pay status) until disposition of the case has been had. If it is proposed to suspend such an employee for more than thirty (30) days or discharge the employee, the emergency action taken under this Section may be made the subject of a separate grievance.

Due to the immediate nature of an emergency suspension, no advance notice is possible. Without 30 days' advance written notice, it would be a violation of the Veterans' Preference Act to retain a preference-eligible veteran in a non-pay status longer than 14 days under this provision. Usually this causes management to return veterans' preference-eligible employees to a pay status after 14 days in a non-pay status. The phrase "pay status" should not be confused with

the preference-eligible veteran being returned to work.

If a preference-eligible veteran is suspended under Article 16, Section 7 of the National Agreement without 30 days' advance notice and is *not* returned to a pay status before 14 days have elapsed, the veteran should consider filing an MSPB appeal in addition to a grievance.

Preference-eligible veterans who receive discipline should be sure to notify their shop steward of both the discipline and their veterans' preference eligible status so the steward can ensure that proper procedures are followed.

A special thanks goes to all the veterans who are a part of this union. NALC, and this country, are thankful for your service and sacrifice. Thank you for your bravery.

For more information pertaining to military service and USPS, city carriers are encouraged to read the *NALC Veterans Guide*, which can be found at nalc.org/veterans.

Join the NALC Veterans Group

The NALC Veterans Group is designed to provide NALC members—both active and retired letter carriers—who are also military veterans the ability to connect with fellow NALC veterans and stay informed on issues of importance to letter carrier veterans. It is free to join.

Members receive a pin as a symbol of gratitude for their military service and membership in NALC.

If you are interested in joining the group, complete the sign-up card at nalc.org/veterans.