

O'Donnell, Schwartz & Anderson, P. C.

Counselors at Law

1300 L Street, N.W., Suite 1200

Washington, D. C. 20005

ASHER W. SCHWARTZ
DARRYL J. ANDERSON
MARTIN R. GANZGLASS
LEE W. JACKSON*
ARTHUR M. LUBY
ANTON G. HAJJAR**
SUSAN L. CATLER

(202) 898-1707
FAX (202) 682-9276

JOHN F. O'DONNELL
(1907-1993)

*60 East 42nd Street
Suite 1022
New York, N.Y. 10165*

(212) 370-5100

*ALSO PA. AND MS. BARS
**ALSO MD. BAR

M E M O R A N D U M

TO: Bill Burrus

AH FROM: Anton Hajjar

DATE: June 21, 1995

RE: Postal preference eligible employees' right to appeal RIF decisions to the MSPB

You asked whether postal preference eligibles need to have a year's continuous service in order to appeal RIF decisions. The answer is no. I will explain.

The MSPB has jurisdiction to hear appeals "from any action which is appealable under any law, rule, or regulation." 5 U.S.C. 7701(a). The RIF statute -- 5 U.S.C. 3502 -- makes no mention of a right to appeal. However, it does give OPM broad rulemaking authority. An OPM rule states: "An employee who has been furloughed for more than 30 days, separated, or demoted by a reduction in force action may appeal to the Merit Systems Protection Board." 5 CFR 351.901. The coverage of the RIF rules under 5 U.S.C. 531.202 is "each civilian employee in ... the executive branch of the Federal Government" and all other "parts of the Federal Government which are subject by statute to competitive service requirements" No exception is made for employees with less than a year of continuous employment. The basic treatises on MSPB procedure -- e.g., Vaughn and Broida -- do not say differently.

There is a statutory restriction on access to the MSPB for adverse actions. Section 7511(a) of Title 5 defines an employee as:

(B) a preference eligible in the excepted service who has completed 1 year of current continuous service in the same or similar positions ... (ii) in the United States Postal Service

Bill Burrus
June 21, 1995
Page 2

However, Section 7512 says: "This subchapter ... does not apply to ... a reduction-in-force action under section 3502 of this title" Thus the one year continuous service requirement is not applicable to RIF appeals.

cc. Moe Biller
Darryl Anderson
Lee Jackson