

U.S. MERIT SYSTEMS PROTECTION BOARD
Information Sheet No. 9
Veterans Employment Opportunities Act of 1998 (VEOA)

Purpose

The purpose of this information sheet is to provide general guidance and background information. It does not represent an official statement approved by the Board itself, and is not intended to provide legal counsel or to be cited as legal authority. Instead, it is intended only to help the public become familiar with the MSPB and its procedures. In all instances, however, the statute, the Board's regulations, and current case law control with respect to matters discussed here.

What is the Veterans Employment Opportunities Act of 1998?

The Veterans Employment Opportunities Act of 1998 or VEOA is a federal law that provides certain federal employees and applicants with a means of redress in the event that a federal executive agency violates an employee's or applicant's veterans' preference rights. [5 U.S.C. §§ 3330a-3330b](#).

Which employees and applicants can file a VEOA appeal with the Board?

Because VEOA primarily concerns the rights afforded to preference eligibles, i.e., individuals entitled to veterans' preference, generally only preference eligible employees and applicants are entitled to file VEOA appeals. [5 U.S.C. § 3330a\(a\)\(1\)\(A\)](#). However, a non-preference eligible individual who has been separated from the armed forces under honorable conditions after 3 years or more of active service may file a VEOA appeal if the individual alleges that an agency has denied the individual the opportunity to compete for a vacant position for which the agency is accepting applications from outside its own workforce. [5 U.S.C. §§ 3330a\(a\)\(1\)\(B\); 3304\(f\)\(1\)](#).

Who qualifies as a "preference eligible?"

For the purpose of employment in the federal government, the term "preference eligible" is defined in [5 U.S.C. § 2108\(3\)](#). The term includes veterans who have been separated from the armed forces under honorable conditions and who served on active duty in the armed forces during a war or in a campaign or expedition for which a campaign badge has been authorized or during particular defined periods. The Office of Personnel Management's [VetGuide](#) provides a comprehensive list of campaigns and expeditions which qualify for veterans' preference. The VetGuide is available at the following internet address:

<http://www.fedshirevets.gov/hire/hrp/vetguide/index.aspx>. The term “preference eligible” also includes disabled veterans. In addition, the mother, spouse, or unmarried widow or widower of certain veterans may qualify as a “preference eligible” under particular circumstances. A retired member of the armed forces is generally excluded from the definition of “preference eligible” unless the individual qualifies as a disabled veteran or retired below the rank of major or its equivalent. 5 U.S.C. § 2108.

What veterans’ preference rights can the Board address under VEOA?

VEOA provides a means of redress for any violation of an “individual’s rights under any statute or regulation relating to veterans’ preference.” [5 U.S.C. § 3330a\(a\)\(1\)\(A\)](#). In some cases, it is obvious that a particular right derives from a statute or regulation relating to veterans’ preference because the statute or regulation explicitly refers to preference eligibles. However, even if it does not explicitly refer to veterans’ preference or preference eligibles, a statute or regulation relates to veterans’ preference so long as it stands in some relation to, has a bearing on, concerns, or has a connection with veterans’ preference rights. *See Dean v. Department of Agriculture*, [99 M.S.P.R. 533](#), ¶ 17 (2005), *aff’d on reconsideration*, 104 M.S.P.R. 1 (2006).

How do I file a VEOA appeal with the Board?

Before individuals can file VEOA appeals with the Board, they must first file a complaint with the Secretary of Labor. The Department of Labor’s website explains how to file a veterans’ preference complaint with that agency: http://www.dol.gov/vets/programs/vetspref/veterans_preference_fs.htm. After filing a complaint with the Secretary of Labor, an individual may file a VEOA appeal with the Board if the Secretary of Labor is unable to resolve the complaint within 60 days after the date on which the complaint is filed. If you have not yet received a notice from the Secretary after that 60-day period, you must provide written notice to the Secretary of your intention to file an appeal to MSPB before you may do so. However, an appeal may not be filed before the 61st day after the date on which the complaint was filed or later than 15 days after the date on which the complainant receives written notification that the Secretary has been unable to resolve the complaint. [5 U.S.C. § 3330a\(d\)\(1\)](#).

Am I entitled to a hearing if I file a VEOA appeal?

The Board has the authority to decide a VEOA claim on the merits, without a hearing, when there is no genuine dispute of material fact and one party must prevail as a matter of law. *Davis v. Department of Defense*, [105 M.S.P.R. 604](#), ¶ 12 (2007). In other words, while an individual who files a VEOA appeal does

not have a right to a hearing, the Board may conduct a hearing if necessary to resolve a factual dispute between the parties.

What do I have to do to win my appeal?

To be entitled to relief under VEOA, the individual who filed the appeal must prove by preponderant evidence that the agency's action violated one or more of the individual's statutory or regulatory veterans' preference rights. *Dale v. Department of Veterans Affairs*, [102 M.S.P.R. 646](#), ¶ 10 (2006).

If I win my appeal, what relief will the Board provide?

If the Board determines that an agency has violated an individual's rights under a statute or regulation relating to veterans' preference, VEOA provides that the Board shall order the agency to comply with the statute or regulation it violated and award the individual compensation for any loss of wages or benefits the individual suffered due to the violation. The individual is also entitled to be awarded reasonable attorney fees, expert witness fees, and other litigation expenses. Furthermore, if the Board determines that the agency knew or showed reckless disregard as to whether its conduct was prohibited by statute or regulation, VEOA provides that the Board shall award the individual an additional amount equal to backpay. [5 U.S.C. § 3330c](#).