



Preference-eligible veterans and the discipline process

Letter carriers who are preference-eligible employees, as defined by the Veterans' Preference Act of 1944, have additional protections when the Postal Service initiates disciplinary action. 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). A preference-eligible employee's right to appeal an action to the MSPB is not affected by the rights granted 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.

Based on this language, a preference-eligible employee may file a grievance under Article 15 of the National Agreement and/or an appeal through the MSPB. However, while 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.

The USPS-NALC *Joint Contract Administration Manual (JCAM)* explains this dual filing process 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 employ-

ee 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.

In order to alert all grievance handlers that an employee has filed an MSPB appeal, Item 12.a on PS Form 8190, USPS-NALC Joint Step A Grievance Form, asks if there is a companion MSPB appeal. While the shop steward should answer this question on PS Form 8190 and all parties should be aware of the dual filing, the grievant is responsible for adhering 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). Additional information regarding the MSPB appeal process is available at mspb.gov.

Normally, 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, the instructions on 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

with respect to emergency suspensions imposed pursuant to Article 16, Section 7 of the National Agreement, which provides in pertinent part:

16.7. Emergency Procedure

An employee may be immediately placed on an off-duty status (without pay) by the Employer... The employee shall remain on the rolls (non-pay status) until disposition of the case has been had.

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. Therefore, management usually returns veterans' preference eligible employees to a pay status after 14 days in a non-pay status. If a preference eligible veteran is suspended under Article 16, Section 7 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 proper procedures are followed. For more information pertaining to military service and the Postal Service, city carriers are encouraged to read the *NALC Veterans Guide*, which can be found at nalc.org/news/nalc-updates/body/veterans-guide-final.pdf.

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