1. **Otherwise Appealable Actions**

**Personnel actions that are directly appealable to the Board include adverse actions (removals, suspensions that exceed 14 days, reductions in grade or pay, and furloughs for 30 days or less), performance-based removals or reductions in grade, denials of within-grade salary increases, reduction-in-force actions, and denials of restoration or reemployment rights.** You will find a complete list of those actions at [5 C.F.R. § 1201.3 Opens a New Window.](http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?YEAR=current&TITLE=5&PART=1201&SECTION=3&TYPE=PDF) . With limited exceptions, if the agency takes any of these actions against you, known in this context as an "otherwise appealable action" (OAA), and if MSPB has jurisdiction to hear an appeal from a person with your tenure, preference eligible status, etc., it may also consider a claim that the action was taken for one of the reasons prohibited by [5 U.S.C. § 2302 Opens a New Window.](http://www.law.cornell.edu/uscode/5/2302.html) (b). Such a claim is called an "affirmative defense" to the agency's action, and MSPB will consider it because Congress specified in [5 U.S.C. § 7701 Opens a New Window.](http://www.law.cornell.edu/uscode/5/7701.html) (c)(2)(B) that even if the agency proves its action by the required standard of proof, its decision may not be sustained if you show "that the decision was based on any prohibited personnel practice described in section 2302(b) of" Title 5 of the U.S. Code. In such an appeal, both the appealable matter and the claim of reprisal for whistleblowing will be reviewed by the Board.Thus, in such cases, the agency has the burden of proving the action that it took and you have the burden of proving by a preponderance of the evidence your claim of a PPP. A preponderance of the evidence is the degree of relevant evidence that a reasonable person, considering the entire record, would accept as sufficient to find that your claim is more likely to be true than untrue. [5 C.F.R. § 1201.56 Opens a New Window.](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?type=simple;c=ecfr;cc=ecfr;rgn=div8;idno=5;q1=1201.56;sid=fdfe5a2b24d9dd6249c46de5614962b7;view=text;node=5%3A3.0.1.1.2.2.25.27) (c)(2).

Time Limit for Otherwise Appealable Action:

You must file within 30 calendar days of the effective date of the action, if any, or within 30 calendar days after the date of receipt of the agency's decision, whichever is later. (If the filing deadline falls on a Saturday, Sunday, or Federal holiday, the filing deadline is extended to the next working day.) However, if you have been subjected to an otherwise appealable action and you choose to seek corrective action from the Special Counsel first, the time limits for appealing to the Board are the same as for an individual right of action appeal.

1. **Individual Right of Action Appeal**

If you don’t have an Otherwise Appealable Action, you must rely on OSC to request corrective action on your behalf, but under some circumstances, you may be able to file an Individual Right of Action Appeal.

Specifically, you may file what is known as an individual right of action (IRA) appeal if you believe that an agency has taken, threatened to take, or failed to take a personnel action against you because you "blew the whistle," i.e., disclosed information that you reasonably believed evidences a violation of law, rule, or regulation, gross mismanagement or a gross waste of funds, an abuse of authority or a substantial and specific danger to public health or safety. [5 U.S.C. §§ 1221 Opens a New Window.](http://www.law.cornell.edu/uscode/5/1221.html) (a), 2302(b)(8). The WPA provided additional protection to whistleblowers by adding the right to file an individual right of action (IRA) appeal with the Board if an agency has retaliated against the whistleblower by taking, threatening to take, proposing, or not taking any of several other types of personnel actions that are not directly appealable to the Board:

***(1) an appointment;
(2) a promotion;
(3) an action under Chapter 75 of Title 5, United States Code or other disciplinary or corrective action that does not rise to the level of an adverse action;
(4) a detail, transfer, or reassignment;
(5) a reinstatement;
(6) a restoration;
(7) a reemployment;
(8) a performance evaluation under Chapter 43 of Title 5, United States Code;
(9) a decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other personnel action;
(10) a decision to order psychiatric testing or examination; or
(11) any other significant change in duties, responsibilities, or working conditions.***

**Before an employee or applicant for employment can file an IRA appeal with respect to a personnel action that is not directly appealable to the Board, he or she must first seek corrective action from the Office of Special Counsel. In this kind of case, the individual can appeal to the Board only if he files a complaint with the Special Counsel first and the Special Counsel does not seek corrective action on the individual's behalf.**

Time Limits for Individual Right of Action:

The time limits for filing an individual right of action appeal depend on what the Special Counsel does with your complaint.

* If the Special Counsel notifies you that the office is terminating its investigation of your complaint, you have 65 days from the date of the Special Counsel's written notice, or 60 days from your receipt of the notice, whichever is later, to file an individual right of action appeal with the Board.
* If 120 days pass after you file a complaint with the Special Counsel and that office has not notified you that it will seek corrective action on your behalf, you may file an individual right of action appeal with the Board anytime thereafter.

In addition, if you believe that an agency violated a veterans preference requirement you may also ask MSPB to correct the violation. That is because such a violation is prohibited not just by [5 U.S.C. § 2302 Opens a New Window.](http://www.law.cornell.edu/uscode/5/2302.html) (b)(11), but also by the Veterans Employment Opportunities Act of 1998 (VEOA) (codified in various sections of 5 U.S.C. chapter 33). Under VEOA, there is no requirement that you first seek corrective action from OSC, but you must first raise your claim with the Secretary of Labor.

1. An individual who is subject to a personnel action that is directly appealable to the Board and who claims that the action was taken because of whistleblowing, may choose to file a complaint with the Special Counsel rather than appeal to the Board. If the Special Counsel does not seek corrective action on his behalf, the individual may then appeal to the Board. A covered employee who files a whistleblower complaint with the Special Counsel becomes eligible to file an individual right of action appeal with the Board only if the Special Counsel does not seek corrective action on his or her behalf or 120 days pass after the complaint was received by the Special Counsel. Although such an appeal concerns an "otherwise appealable action," the time limits for filing are the same as for an "individual right of action" and the case will be adjudicated as an individual right of action appeal. *See* 5 C.F.R.  1209.5(a), 1209.3(d)(2). This means that the Board will not review the merits of the action but will resolve only the claim of reprisal for whistleblowing. You should keep this in mind before you decide whether to file a complaint with the Special Counsel.