

## Chapter 3. Reconsideration and Appeal

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## Subchapter 3A. CSRS and FERS

### *Part 3A1. General Information*

#### **Subpart 3A1.1. Overview**

##### *Section 3A1.1-1. Introduction and Organization*

#### **A. Introduction**

This chapter explains the rules that apply to requests for reconsideration and/or appeals of OPM decisions before the Merit Systems Protection Board (MSPB or Board).

#### **B. Topics Covered**

This chapter covers the procedures an individual must follow to request reconsideration of an initial OPM decision or to appeal a final OPM decision.

**Note 1:** See [Chapter 11](#), *Elections of FERS Coverage*, for the procedures an agency must follow in making initial decisions about certain elections to transfer to FERS.

**Note 2:** See [Chapter 46](#), *Special Retirement Provisions for Law Enforcement Officers, Firefighters, Air Traffic Controllers, and National Guard Technicians*, for the procedures an agency must follow in making coverage determinations for law enforcement officers and firefighters.

#### **C. Organization of Subchapter**

This subchapter has three parts.

<b>Part</b>	<b>Name of Part</b>	<b>Page</b>
3A1	General Information	1
3A2	Reconsideration	2
3A3	Appeal	4

#### **D. Statement of Authority**

This chapter and its contents are based on the laws and regulations cited below.

- sections 8347(d) and 8461(e) of title 5, United States Code;
- sections 831.109-110 and 841.305-309 of title 5, Code of Federal Regulations.

## *Part 3A2. Reconsideration*

### **Subpart 3A2.1. Request for Reconsideration**

#### *Section 3A2.1-1. Rules*

##### **A. General Rule**

Generally, any individual whose rights or interests under CSRS or FERS are affected by a decision of OPM may request OPM to review its initial decision.

An initial decision is a decision in which OPM informs an individual, in writing, of its decision, and which includes the individual's right to seek reconsideration

##### **B. Exception: Initial Final Decisions**

When circumstances warrant, OPM's initial decision will be issued as a final decision. An initial final decision will provide a direct appeal to the Merit Systems Protection Board (MSPB or Board). (See [Part 3A3.](#)) (Please note: these initial final decisions are distinguished from final decisions issued by OPM as part of the reconsideration process, which are discussed in greater detail below.)

##### **C. Content of Reconsideration Appeal**

A request for reconsideration must be in writing, include the individual's name, address, date of birth, and claim number (if applicable), and state the basis for the reconsideration request.

##### **D. Time Limit on Filing Reconsideration Request**

A request for reconsideration must be received by OPM within 30 calendar days from the date of the initial decision.

OPM may extend the time limit for filing when the individual shows that he or she:

- Was not notified of the time limit and was not otherwise aware of it; or
- Was prevented by circumstances beyond his or her control from making the request within the time limit.

##### **E. Final Reconsideration Decisions**

After the reconsideration process is completed, OPM will issue a final reconsideration decision in writing. The decision will set forth the findings and conclusions of the reconsideration in full and contain notice of the right to appeal. (See [Part 3A3.](#))

Copies of the final reconsideration decision will be sent to the individual, to any competing claimants, and where applicable, to the employing agency.

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### *Section 3A2.1-2. Competing Claimants*

#### **A. Competing Claimants**

Competing claimants consist of two or more applicants for survivor benefits whose applications are based on the service of a deceased employee, separated employee, or retiree when:

1. A survivor annuity or lump sum benefit is payable based on the service of the deceased employee, separated employee, or retiree;
2. Two or more claimants have applied for a survivor annuity or lump sum benefit based on the service of the deceased employee, separated employee, or retiree; and
3. An OPM decision in favor of one claimant will adversely affect the other claimant(s).

#### **B. Notification Requirement**

When a competing claimant files a request for reconsideration, OPM notifies the other competing claimants of the request and gives them an opportunity to submit written substantiation of their claim.

#### **C. Final Reconsideration Decisions Involving Competing Claimants**

In cases involving competing claimants, OPM will issue a final reconsideration decision in writing. The decision will set forth the findings and conclusions of the reconsideration in full and contain notice of the right of appeal. (See [Part 3A3.](#))

Copies of the final reconsideration decision will be sent to all competing claimants.

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### *Part 3A3. Appeal*

#### **Subpart 3A3.1. Appeal to the Merit Systems Protection Board (MSPB)**

##### *Section 3A3.1-1 Rules*

###### **A. General Rule**

An individual whose rights or interests under CSRS or FERS are affected by a final decision issued by OPM may file an appeal of OPM's final decision with the MSPB. The appeal is the individual's request that the MSPB review OPM's decision. The MSPB's review will be performed in accordance with procedures prescribed by the Board.

**Note:** When OPM issues a final decision appealable to the MSPB, the decision will include instructions on how to file an appeal. Appeals filed with the MSPB before OPM issues a final decision may be found to be premature.

**Exception:** An OPM determination that payment of annuity is barred by subchapter II of chapter 83 of title 5, U.S. Code (concerning persons convicted of offenses involving national security violations) is not appealable to the MSPB.

**Note:** Generally, OPM decisions concerning the Federal Employees Health Benefits (FEHB) Program, the Federal Employees' Group Life Insurance (FGLI) Program, the Federal Employee Dental and Vision Insurance Program (FEDVIP) and the Federal Long Term Care Insurance Program (FLTCIP) are not appealable to the MSPB. Appeals of OPM decisions involving health, life, dental, vision or long-term care insurance may be filed in the Court of Federal Claims, or an appropriate federal court of original jurisdiction, after applicable administrative remedies have been exhausted.

###### **B. The MSPB**

The MSPB is an independent Government agency created to ensure that all Federal agencies follow Federal merit systems principles and practices, and to allow employees to appeal certain personnel actions initiated by Federal agencies.

**Note:** The regulations that describe the organization and procedures of the MSPB are found in 5 CFR Part 1200-1299.

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