

Reduction in Force Appeals

Frequently Asked Questions

Overview

1. What does this rule do?

The rule establishes a new administrative appeal process at OPM for employees who are furloughed for more than 30 days, separated, or demoted by a reduction-in-force action under 5 CFR part 351. Pursuant to this rule, OPM replaces the Merit Systems Protection Board (MSPB) as the adjudicative agency for these appeals.

2. When does the rule apply?

The rule applies prospectively. It covers only RIF actions for which the agency issues the employee a specific RIF notice under 5 CFR 351.802 on or after September 2, 2026. Appeals of RIF actions noticed before that date, including appeals pending before the MSPB, continue to be adjudicated by the MSPB under the procedures applicable when the action was taken.

Timeline and Key Deadlines at a Glance

All tolling periods in this rule are counted in **calendar days**. If a filing deadline falls on a Saturday, Sunday, or Federal holiday, the period extends to the next workday. Untimely filings may be accepted only on a showing of good cause, in OPM's sole and exclusive discretion.

Action	Deadline	Citation
Employee files appeal	30 days after the effective date of the action under appeal, by 11:59 p.m. Eastern Time	§ 351.902(b)
Employee files appeal after a timely filed collateral matter is resolved	30 days after the decision on the collateral matter becomes final	§ 351.902(b)(3)
Agency files response and agency record	30 days after service of the initial appeal	§ 351.903(b)
Employee files reply to agency response	15 days after the agency response	§ 351.903(c)
Party requests reconsideration of initial decision	30 days from issuance of the initial decision	§ 351.907(a)
Initial decision becomes final (no timely reconsideration request or Director reopening)	30 days after issuance	§ 351.909(a)
Initial decision becomes final after OPM denies or dismisses a reconsideration request	30 days after issuance of the denial or dismissal, unless the Director reopens	§ 351.909(b)
Reopened and reconsidered (R&R) decision becomes final	30 days after issuance, unless the Director reopens	§ 351.909(b)

Coverage and Appeal Rights

3. Who may appeal a RIF action?

Only an employee who has been furloughed for more than 30 days, separated, or demoted by a reduction-in-force action taken under part 351 may appeal that action to OPM under this rule.

4. What must an employee prove?

The employee must prove, by a preponderance of the evidence, that the appeal is timely, that OPM has jurisdiction, that the agency failed to comply with an applicable statute or OPM regulation governing RIF actions under part 351, and that the failure to comply prejudiced the appellant by causing the appealed action or the loss of a materially more favorable outcome.

5. May an employee appeal a RIF action in another forum?

No, the procedures in part 351 are the sole and exclusive means of appealing a RIF action. A RIF action may not be raised under a negotiated grievance procedure or contested through grievance arbitration, an agency determination of eligibility for certification of expected separation may not be appealed, and a party cannot obtain judicial review of a decision under the rule.

Agency Responsibilities Before an Appeal

6. What must the RIF notice tell the employee about appeal rights?

The specific RIF notice must inform the employee, as applicable, of the right to appeal to OPM, the time limit for filing an appeal, and the electronic filing system (<https://opmefile.opm.gov>) through which an appeal must be filed.

7. What is included in the agency record?

The agency record includes, at a minimum: the RIF notice and effective-date documents; documents supporting the reason for the RIF; the employee's coverage, appointment, tenure, veterans' preference, and related records; competitive-area and competitive-level records; the applicable retention register and retention-standing records; order-of-release records; assignment-rights records; records of any special RIF circumstance; and a certification that the complete agency record has been produced.

8. Must the agency share the record with the employee?

Yes. The agency must produce the complete agency record to OPM as part of the agency's response and serve it to the employee. The agency may redact or withhold information from the appellant's copy only to the extent necessary to comply with the Privacy Act, applicable legal privileges, classified information or national security requirements, OPM protective orders, or other disclosure limits required by law.

Filing an Appeal

9. How does an employee file an appeal?

Appeals must be filed through the electronic filing system at <https://opmefile.opm.gov>, unless a party demonstrates good cause and obtains OPM's approval. OPM will not accept pleadings, evidence, or documents by email or postal mail unless approval has been granted.

10. When must an appeal be filed?

An appeal must be filed by 11:59 p.m. Eastern Time on the 30th calendar day after the effective date of the action under appeal. If the last day falls on a Saturday, Sunday, or Federal holiday, the period extends to the next workday. Untimely appeals are dismissed unless the employee demonstrates good cause, which is within OPM's sole and exclusive discretion. A limited tolling rule allows an employee who timely filed a collateral matter with another entity to file within 30 calendar days after the final decision on that matter, where the decision materially affects the employee's rights under part 351.

11. What should an appeal include?

The appeal must be in writing and state the basis of the appeal; the name, address, and email address or phone number of the appellant and any representative; and include any supporting documentation.

12. How must parties serve documents on each other?

All documents will be served by the parties through OPM's e-filing system unless OPM grants leave for a party to proceed through other means. No matter the method for service, all parties are required to ensure that they serve on each other copies of all information submitted to OPM with respect to an appeal. Service must be made on all other parties at the same time the information is submitted to OPM and must be accompanied by a certificate of service stating how and when service was made.

13. May an employee have a representative?

Yes. An appellant may select a representative of their choice by submitting a written designation for the specific appeal. A Federal employee representative may not perform representational functions while in a duty status, including on official time, and may not claim agency reimbursement for expenses. OPM or the responsible agency may disallow a representative only when the representative is an employee of the responsible agency or OPM and the activity would cause a conflict of interest or position.

E-Filing Mechanics

14. Who must register as an e-filer?

All parties and their representatives must register as instructed on OPM's e-filing website. No party may electronically file any document or access an appeal unless registered as an e-filer or exempted for good cause.

15. When is a document considered filed?

Documents filed in OPM's e-filing system are deemed received on the date of the electronic submission.

16. What are an e-filer's ongoing responsibilities?

E-filers must follow the filing instructions on OPM's website, promptly update their profile and notify OPM and other parties of any change in address, telephone number, or email address, and monitor case activity regularly to ensure they receive all case-related documents. OPM may strike a document where an e-filer repeatedly fails to follow filing instructions after a show cause order.

17. Can a party be exempted from e-filing?

Yes. OPM, in its sole and exclusive discretion, may exempt a party or representative from registering as an e-filer for good cause. The party must promptly contact OPM as instructed on OPM's website to

request an exemption. OPM will not find good cause for an untimely appeal or reconsideration request if the party failed to request an exemption before the deadline.

18. What happens if a party withdraws e-filing registration?

After a proper withdrawal is processed, documents will no longer be served on that person electronically and the person loses electronic access to their case records. OPM may still process the appeal or reconsideration request, and withdrawal is not good cause for staying a case.

How OPM Processes Appeals

19. How will OPM decide an appeal?

Appeals are decided on the developed written record. The agency must respond within 30 calendar days after service of the appeal, and the employee may file a reply within 15 calendar days of the agency response, generally limited to issues raised by the agency.

20. Do the parties have a right to discovery or a hearing?

No, there is not a process for discovery available to the parties. However, OPM may require either party to provide additional information and may audit or investigate the agency's action when the record is insufficient. Also, OPM will conduct a hearing only when necessary and efficient, meaning the written record is insufficiently developed on a material fact or a disputed issue of witness credibility is material to the outcome.

21. Who adjudicates appeals?

OPM assigns adjudicators who are insulated from officials who participated personally and substantially in the challenged action or provided case-specific advice concerning the matter. No OPM employee may adjudicate an appeal if the employee has a relationship with the appellant or, during the preceding two years, was an employee of the agency that is a party or was subject to a RIF action. When necessary, OPM may assign an administrative law judge (ALJ) to preside.

22. What safeguards apply when an OPM employee appeals?

OPM will assign an ALJ to adjudicate any appeal by an OPM employee and to issue the initial decision. To insulate these appeals from agency involvement, OPM will not disturb the ALJ's initial decision unless a party shows a harmful procedural irregularity in the proceedings before the ALJ, a clear error of law, or a material factual error that affected the outcome. A harmful procedural irregularity is one likely to have caused the ALJ to reach a different conclusion than the ALJ would have reached absent the irregularity or its cure.

Outcomes and Other Rights

23. What remedies may OPM order if an employee is successful in an appeal?

If the employee prevails, OPM may order relief including correction of the personnel action and any back pay, interest, and reasonable attorney fees consistent with the Back Pay Act. Compensatory damages and other relief not authorized under 5 U.S.C. 5596(b) are not available. Ordered relief continues during reconsideration unless OPM issues a stay, and no stay may deprive the employee of pay and benefits while reconsideration is pending.

24. Can an employee pursue other claims?

Yes. The rule does not preclude an employee from filing a complaint, appeal, or other matter within the independent jurisdiction of the EEOC, an Inspector General, the MSPB, the Department of Labor Veterans' Employment and Training Service, or the Office of Special Counsel.

25. May a party appeal an OPM initial decision?

Either party may request reconsideration within 30 calendar days of the initial decision, filed in the same manner as an initial appeal; OPM may also reopen a decision on its own initiative. OPM may grant reconsideration, in its sole and exclusive discretion, where: (1) the initial decision contains erroneous findings of material fact sufficient to warrant a different outcome; (2) the decision rests on an erroneous interpretation of statute or regulation or an erroneous application of law to the facts, and the party explains how the error affected the outcome; (3) new and material evidence or legal argument is available that, despite the party's due diligence, was not available when the record closed — meaning the information itself, not just the documents, was unavailable; or (4) OPM finds good cause.

26. What is a reopened and reconsidered decision?

In a reopened case, OPM may issue a reopened and reconsidered (R&R) decision that affirms, reverses, modifies, vacates, or otherwise decides the case in whole or in part; require the parties to submit argument and evidence; take any other action necessary for final disposition; and issue an order setting a compliance date. There is no further right of administrative appeal from an R&R decision. If the agency requests reconsideration or OPM reopens a decision, the agency must continue to provide any ordered relief unless OPM stays it, and no stay may deprive the employee of pay and benefits while reconsideration is pending.

27. Are OPM decisions final?

An initial decision becomes final 30 calendar days after issuance unless, before that time, a party timely requests reconsideration or the OPM Director reopens the decision. A timely reconsideration request suspends finality: if OPM denies or dismisses the request, the initial decision becomes final 30 calendar days after the denial or dismissal; if OPM grants it, the R&R decision becomes final 30 calendar days after issuance, in each case unless the Director reopens first. A Director decision disposing of the appeal is final upon issuance. A party cannot obtain judicial review of a decision under the rule.

28. What is Director review?

Before a decision becomes final, the OPM Director may, on the Director's own initiative, reopen and reconsider any initial or reconsidered decision, considering factors such as clear legal error, erroneous material factual findings, or issues of exceptional or governmentwide importance. Parties have no right to request Director review.