



MERIT SYSTEMS PROTECTION BOARD FORM 185-1

Appeal Form--Appellant and Agency Information

Please type or print legibly.

HEARING: You may have a right to a hearing before an administrative judge. If you choose to have a hearing, the Board will notify you when and where it is to be held. If you do not want a hearing, the Board will make its decision on the basis of the submission of the parties.

12. Do you want a hearing? Yes No

E-Filing: Registration as an E-Filer enables you to file any or all of your pleadings with the Board in electronic form. Registration also means you consent to accept service of all pleadings filed by other registered E-Filers and all documents issued by the Board in electronic form. You will receive these as PDF documents at the e-mail address you provided the Board. If registered as an E-Filer, you may file any pleading, or portion of a pleading, by non-electronic means. You can withdraw your registration as an e-filer at any time.

13. Do you wish to register as an E-Filer in this appeal?
 I elect to E-File I decline to E-File

14. I certify that all of the statements made in this form and all attached forms are true, complete, and correct to the best of my knowledge and belief.

David W. Noble, Appellant

Date:

Appeal Number: 201103052

Submission Date: 8/15/2011 10:28:48 PM

Confirmation Number: 31465

MSPB Form 185-1, Page 2 (6/1/2002)
5 CFR Parts 1201, 1208, and 1209



MERIT SYSTEMS PROTECTION BOARD FORM 185-2

Appeal of Agency Personnel Action or Decision (Non-retirement)

Complete this form and attach it to MSPB Form 185-1 if you are appealing an agency personnel action or decision (other than a decision or action affecting your retirement rights or benefits) that is appealable to the Board under a law, rule, or regulation. If the personnel See 5 CFR 1201.3(a) for a list of appealable personnel actions and action or decision is appealable to the Board, you should have received a final decision letter from the agency that informs you of your right to file an appeal with the Board.

Please type or print legibly.

OMB No. 3124-0009

Please submit only the attachments requested in this form at this time. You will be afforded the opportunity to submit detailed evidence in support of your appeal later in the proceeding.

Name (last, first, middle initial) Noble, David, W.

Check the box that best describes the personnel action or decision taken by the agency you named in MSPB Form 185-1 that you are appealing. (If you are appealing more than one action or decision, check each box applies.) Attach a copy of the decision letter (if any). If an SF-50 or its equivalent was issued and is available, attach it now; however, DO NOT delay filing your appeal because you do not have an SF-50. You may submit the SF-50 when it becomes available.

Termination of Employment (You may select only one of the following four personnel actions.)

- Removal (Termination after probationary or initial service period)
- Termination during probationary or initial service period
- Reduction in grade or pay
- Separation, demotion, or furlough for more than 30 days by reduction in force (RIF)
- Denial of within-grade increase
- Negative suitability determination
- Other action
- Involuntary Resignation
- Involuntary Retirement
- Suspension for more than 14 days
- Furlough of 30 days or less
- Failure to restore/reemploy/reinstate or improper restoration/reemployment/reinstatement

2. Date you received the agency's proposal letter (if any) (month, day, year) <p style="text-align: center;">04/29/2011</p>	3. Date you received the agency's final decision letter (if any) (month, day, year) (Attach a copy) <p style="text-align: center;">07/06/2011</p>	4. Effective date (if any) of the agency action or decision (month, day, year) <p style="text-align: center;">07/22/2011</p>
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5. Prior to filing this appeal, did you and the agency mutually agree in writing to try to resolve the matter through an alternative dispute resolution (ADR) process?
 Yes No

6. Explain briefly why you think the agency was wrong in taking this action or making this decision.

See Continuation Sheet for Response.

7. What action would you like the Board to take in this case (i.e., what remedy are you asking for)?

Order USPS to cancel the removal action and return me to the status quo ante.



MERIT SYSTEMS PROTECTION BOARD FORM 185-2

Appeal of Agency Personnel Action or Decision (Non-retirement)

Please type or print legibly.

8. With respect to the agency personnel action or decision you are appealing, have you, or has anyone on your behalf, filed a grievance under a negotiated grievance procedure provided by a collective bargaining agreement?

Yes

No

9. If your answer to question 8 is "Yes," on what date was the grievance filed (month, day, year)?

NOT APPLICABLE

10. If your answer to question 8 was "Yes," has a decision on the grievance been issued?

NOT APPLICABLE

11. Select all the additional claims you would like to file with this appeal.

No Additional Claims

File a claim for harmful procedural error

File a claim for not in accordance with law

File a claim of prohibited discrimination

File a claim of prohibited personnel practices

File a Whistleblower claim

Request a whistleblower stay

File a USERRA claim

File a veteran's preference claim

Appeal Number: 201103052

Submission Date: 8/15/2011 10:28:48 PM

Confirmation Number: 31465

MSPB Form 185-2, Page 2 (6/1/2002)
5 CFR Parts 1201, 1208, and 1209



Merit Systems Protection Board Form 185-2 Appeal of Agency Personnel Action or Decision (Non-retirement)

Continuation Sheet

6. Explain briefly why you think the agency was wrong in taking this action or making this decision.

1. I was not AWOL as charged. Instead, I was on LWOP. USPS may not discipline employees for use of approved leave.
2. USPS's removal action violates several provisions of the NALC/USPS collective bargaining agreement.
3. Through harassment, bad faith, malice, and provocation the proposing and concurring officials (and others) acted to make it impossible for me to work because they made working conditions completely intolerable.
4. Insufficient/incomplete consideration of Douglas factors.
5. Removal is unwarranted, or in the alternative, too severe.



MERIT SYSTEMS PROTECTION BOARD FORM 185-4A

Claims of Mistakes in Procedures or Violations of Law

Please type or print legibly.

OMB No. 3124-0009

Name (last, first, middle initial) Noble, David, W.

Harmful error is defined in the Board's regulations as: "Error by the agency in the application of its procedures that is likely to have caused the agency to reach a conclusion different from the one it would have reached in the absence or cure of the error." See 5 C.F.R.

If you believe that the agency made a error(or error) in applying required procedures in connection with the action or decision you

The removal action violated several sections of the NALC/USPS collective bargaining agreement concerning administration of discipline.

2. Explain how the error you in response to question 1 above caused the agency to reach a conclusion different from the one it would have

USPS's actions in taking the removal actions violated mandatory provisions of the collective bargaining agreement. Such violations are regarded by NALC, USPS, and arbitrators as being fatal to the underlying discipline.

An appealable action will be reversed as being "not in accordance with the law" if the agency's action is unlawful in its entirety, i.e., if there is no legal authority for action

3. If you believe that the agency action or decision you are appealing, was "not in accordance with law," please explain.

I was on approved leave during the period I was charged with unsatisfactory attendance/AWOL. USPS is barred by MSPB case law from disciplining employees for use of approved leave.

4. If you believe a specific law was violated, please identify the law and describe how the law you identified was violated.

Appeal Number: 201103052

Submission Date: 8/15/2011 10:28:48 PM

Confirmation Number: 31465

MSPB Form 185-4A (6/1/2002)
5 CFR Parts 1201

e-Appeal Attachment Transmittal

Appeal Number: 201103052
Appellant Name: David W. Noble
Agency Name: United States Postal Service

Please check the box for each document included with this transmittal.

<input type="checkbox"/>	Name of Attachment	Attachment Processing Status	File Name/Delivery Method
<input type="checkbox"/>	Agency Decision Letter	Upload with e-Appeal	Decision.pdf
<input type="checkbox"/>	SF-50, Notification of Personnel Action	Document not available or not applicable	N/A

2 copies must be submitted of all documents submitted in hardcopy.

Send documents to be submitted in paper form to:

Washington DC Regional Office
1800 Diagonal Road Suite 205
Alexandria, Virginia 22314-2840
United States of America

Phone: (703) 756-6250

Fax: (703) 756-7112

CAPITAL DISTRICT



July 5, 2011

David W. Noble Jr.

SUBJECT: Letter of Decision

You were issued a Notice of Proposed Removal dated April 28, 2011 proposing to remove you from the Postal Service based on the charges outlined in that notice. The notice informed you that you and/or your representative could answer the proposal within ten (10) days from receipt of the proposed notice.

As of this date, you have failed to respond verbally or in writing to the proposed Notice of Removal and to the charges as outlined in the Notice; therefore, a decision is being made from the evidence of record. In reaching this decision, I have considered the elements of the charges cited in the Notice dated April 28, 2011. I have carefully considered all of the documents in relation to this matter, and I find that the charges of Unsatisfactory of Attendance are supported fully by the evidence and warrant your removal.

Analysis of the Charges

I find that the charges are fully supported by the evidence of record. I, therefore, sustain the charges. As described in the Notice of Proposal Removal, your attendance is unacceptable for an employee in your position.

Analysis of the Penalty

In determining the appropriate penalty, I have considered the following Douglas factors: (1) the nature and seriousness of your offenses, (2) the effect of the offense upon your ability to perform the job (3) the clarity of the rules that were violated (4) your past work record, length of service and job performance, and (5) mitigating circumstances surrounding the offense.

1. Nature and seriousness of the offense. As to the charge, you are well aware of the rules and regulations governing the responsibilities of your position. Every employee is required to be regular in attendance. Every employee is expected to maintain their assigned schedule and must make every effort to avoid unexpected absences. Your failure to be regular in attendance directly impacts our District goals.

2. Effect of your offense on your ability to perform your job. Management relies on you to be available and work as scheduled. Your inability to report as scheduled places undue burden on management. By not reporting as scheduled,

management has lost its trust and confidence in your ability to perform your current position. Moreover, management has lost its trust and confidence in your ability to perform any job within the Postal Service.

3. Clarity of the Rules Violations. As to the charges, the rules are clear and well known. There is simply no reasonable explanation as to why you were not aware of, and did not understand, the rules that you violated.

4. Past Work Record, Length of Service and Job Performance. I have considered your past work record, including your 33 years with the Postal Service, performance on the job and your discipline history. Nevertheless, your attendance as described in the charge has demonstrated that you are unable to meet the requirements of your position.

5. Mitigating Factors and Alternative Penalties. I have already considered your past work record and history as mitigating factors and have found them to be insufficient to lessen the penalty. You have not made me aware of any factors which would justify mitigating the penalty.

I have considered all the appropriate "Douglas Factors" as they apply to you in rendering my decision. Accordingly, I find it appropriate to remove you from the Postal Service. Therefore, it is my decision that you should be removed effective July 22, 2011.

As a preference eligible, you have the right to appeal this decision in writing to the Regional Office, Merit Systems Protection Board (MSPB), 1800 Diagonal Road, Alexandria, Virginia 22314-2840, within 30 calendar days from the effective date of this decision. If you appeal to the MSPB, please provide me a copy of your appeal. Your appeal to the MSPB should state whether you do or do not want a hearing. For further information on appeals procedures, contact the undersigned. Attached for your reference are a copy of the MSPB regulations and a copy of the appeal form. **Further, if you and the Postal Service mutually agree in writing to attempt to resolve this matter through an alternative dispute resolution process, prior to your filing an appeal with the MSPB is extended by an additional thirty (30) days, for a total of sixty (60) days. If you are interested in the alternative dispute resolution process, you should contact the EEO Complaints Processing Office at (703) 406-6696 for further information.**

For a grievance to be filed timely in accordance to Article 15 of the National Agreement, it must have been presented at Step 1 within 14 calendar days of the receipt of the proposed action. The Notice of Proposed Removal was dated April 28, 2011. You have the right to file an MSPB appeal and a grievance on the same matter. However, the filing of a grievance will not extend the time limit for filing an appeal with the MSPB. You do not have the right to a review by the MSPB of the final decision on a grievance.

An arbitration hearing on your grievance will be deferred if:

- You have an MSPB appeal pending and the union appeals your grievance on the same action to arbitration; or
- You appeal to the MSPB after your grievance has been appealed to arbitration.

You will be deemed to have waived access to arbitration if:

- An MSPB hearing begins on the merits of your appeal
- The MSPB issues a decision on the merits of your appeal;
- You settle the MSPB appeal; or

If you believe that the action is based, in whole or in part, on discrimination, you have the option of filing an appeal with the MSPB or filing an EEO complaint with the Postal Service, but not both. Before filing an EEO complaint, you must bring the matter to the attention of the EEO Office, Capital District, 9201 Edgeworth Drive, Capitol Heights, MD 20790-7606 within 45 days of the effective date of this decision. The EEO complaint will be processed pursuant to the appropriate regulations (29 CFR Section 1614.302 through 1614.310).

If you file an MSPB appeal, you are not entitled to a hearing by the Equal Employment Opportunity Commission (EEOC), unless:

- Your appeal to the MSPB is dismissed for lack of jurisdiction, or
- The Postal Service fails to issue a final agency decision on your EEO complaint within 120 days of the date you filed your EEO complaint.

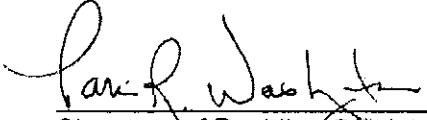
You may request a hearing by the MSPB after the Postal Service has rendered a decision on your EEO complaint or after 120 calendar days from the date of filing your complaint, whichever occurs first.

If you appeal this action, you will remain on the rolls, but in a non-pay, non-duty status after the effective date of this action until disposition of your case has been reached either by settlement or through exhaustion of your administrative remedies. If this action is reversed or modified on appeal by the MSPB or through the EEO appeals process, back pay may be allowed in accordance with 5 CFR Section 550.801 et. seq., as applicable, unless the award or decision specifies otherwise, only if you have made reasonable efforts to obtain alternate employment during the potential back pay period. The documentation, which you must maintain and present to support a back pay claim, is described in Part 436 of the Employee and Labor Relations Manual. In accordance with these provisions, you are advised that throughout the period necessary for adjudication of your appeal, except for the first 45 days, you will be required to furnish a resume of your efforts to secure outside employment during such periods. Therefore, you must maintain documented evidence of each employer contact, including the following information to ensure these job contacts can be verified:

1. *The date you made each contact;*
2. *The business name, address and telephone number;*
3. *Whether the contact was in person, by phone, or by mail;*
4. *The name of the person whom you contacted or who conducted the interview;*
5. *Whether or not you filed an application for employment; and*
6. *The reason you were not offered employment, if you know.*

Failure to make a reasonable effort to secure outside employment or failure to document your efforts may result in your being denied back pay should you be the prevailing party in this appeal.

If you have any questions regarding these instructions, you may call the Labor Relations office for clarification of any point.



Signature of Deciding Official
Paris R. Washington
Manager, Customer Service Operations

Date 7/5/2011

Attachments: MSPB Regulations
MSPB Appeal Form
ELM Part 436

Received by
(Indicates Receipt Only)

Date: _____

Time: _____