

§ 1209.8

5 CFR Ch. II (1–1–22 Edition)

taken, or not taken against the appellant.

(b) However, even where the appellant meets the burden stated in paragraph (a) of this section, the Board will not order corrective action if the agency shows by clear and convincing evidence that it would have threatened, proposed, taken, or not taken the same personnel action in the absence of the disclosure or other protected activity.

[78 FR 39548, July 2, 2013]

Subpart C—Stay Requests

§ 1209.8 Filing a request for a stay.

(a) *Time of filing.* An appellant may request a stay of a personnel action allegedly based on whistleblowing at any time after the appellant becomes eligible to file an appeal with the Board under § 1209.5 of this part, but no later than the time limit set for the close of discovery in the appeal. The request may be filed prior to, simultaneous with, or after the filing of an appeal.

(b) *Place of filing.* Requests must be filed with the appropriate Board regional or field office as set forth in 5 CFR 1201.4(d).

(c) *Service of stay request.* A stay request must be simultaneously served upon the Board's regional or field office and upon the agency's local servicing personnel office or the agency's designated representative, if any. A certificate of service stating how and when service was made must accompany the stay request.

(d) *Method of filing.* A stay request must be filed with the appropriate Board regional or field office by mail, by facsimile, by commercial or personal delivery, or by electronic filing in accordance with § 1201.14 of this chapter.

[55 FR 28592, July 12, 1990, as amended at 58 FR 36345, July 7, 1993, 59 FR 65243, Dec. 19, 1994; 68 FR 59865, Oct. 20, 2003; 69 FR 57631, Sept. 27, 2004]

§ 1209.9 Content of stay request and response.

(a) Only an appellant, his or her designated representative, or a party properly substituted under 5 CFR 1201.35 may file a stay request. The request

may be in any format, and must contain the following:

(1) The name, address, and telephone number of the appellant, and the name and address of the acting agency;

(2) The name, address, and telephone number of the appellant's representative, if any;

(3) The signature of the appellant or, if the appellant has a representative, of the representative;

(4) A chronology of facts, including a description of the appellant's disclosure and the action that the agency has taken or intends to take;

(5) Where the appellant first sought corrective action from the Special Counsel, evidence that the stay request is timely filed;

(6) Evidence and/or argument showing that:

(i) The action threatened, proposed, taken, or not taken is a personnel action, as defined in § 1209.4(a) of this part;

(ii) The action complained of was based on whistleblowing or other protected activity as defined in § 1209.4(b) of this part; and

(iii) There is a substantial likelihood that the appellant will prevail on the merits of the appeal;

(7) Evidence and/or argument addressing how long the stay should remain in effect; and

(8) Any documentary evidence that supports the stay request.

(b) An appellant may provide evidence and/or argument addressing the question of whether a stay would impose extreme hardship on the agency.

(c) *Agency response.* (1) The agency's response to the stay request must be received by the appropriate Board regional or field office within five days (excluding Saturdays, Sundays, and Federal holidays) of the date of service of the stay request on the agency.

(2) The agency's response must contain the following:

(i) Evidence and/or argument addressing whether there is a substantial likelihood that the appellant will prevail on the merits of the appeal;

(ii) Evidence and/or argument addressing whether the grant of a stay would result in extreme hardship to the agency; and