

(B) The special panel shall give due deference to the respective expertise of the Board and Commission in making its decision.

(3) The special panel shall refer its decision under paragraph (2) of this subsection to the Board and the Board shall order any agency to take any action appropriate to carry out the decision.

(4) The special panel shall permit the employee or applicant who brought the complaint and the employing agency to appear before the panel to present oral arguments and to present written arguments with respect to the matter.

(5) Upon application by the employee or applicant, the Commission may issue such interim relief as it determines appropriate to mitigate any exceptional hardship the employee or applicant might otherwise incur as a result of the certification of any matter under this subsection, except that the Commission may not stay, or order any agency to review on an interim basis, the action referred to in subsection (a)(1) of this section.

(6)(A) Each time the Board takes any action under subsection (c)(2) of this section, a special panel shall be convened which shall consist of—

(i) an individual appointed by the President, by and with the advice and consent of the Senate, to serve for a term of 6 years as chairman of the special panel each time it is convened;

(ii) one member of the Board designated by the Chairman of the Board each time a panel is convened; and

(iii) one member of the Commission designated by the Chairman of the Commission each time a panel is convened.

The chairman of the special panel may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office.

(B) The chairman is entitled to pay at a rate equal to the maximum annual rate of basic pay payable under the General Schedule for each day he is engaged in the performance of official business on the work of the special panel.

(C) The Board and the Commission shall provide such administrative assistance to the special panel as may be necessary and, to the extent practicable, shall equally divide the costs of providing the administrative assistance.

(e)(1) Notwithstanding any other provision of law, if at any time after—

(A) the 120th day following the filing of any matter described in subsection (a)(2) of this section with an agency, there is no judicially reviewable action under this section or an appeal under paragraph (2) of this subsection;

(B) the 120th day following the filing of an appeal with the Board under subsection (a)(1) of this section, there is no judicially reviewable action (unless such action is not as the result of the filing of a petition by the employee under subsection (b)(1) of this section); or

(C) the 180th day following the filing of a petition with the Equal Employment Opportunity Commission under subsection (b)(1) of this section, there is no final agency action under subsection (b), (c), or (d) of this section;

an employee shall be entitled to file a civil action to the same extent and in the same manner

as provided in section 717(c) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16(c)), section 15(c) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(c)), or section 16(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(b)).

(2) If, at any time after the 120th day following the filing of any matter described in subsection (a)(2) of this section with an agency, there is no judicially reviewable action, the employee may appeal the matter to the Board under subsection (a)(1) of this section.

(3) Nothing in this section shall be construed to affect the right to trial de novo under any provision of law described in subsection (a)(1) of this section after a judicially reviewable action, including the decision of an agency under subsection (a)(2) of this section.

(f) In any case in which an employee is required to file any action, appeal, or petition under this section and the employee timely files the action, appeal, or petition with an agency other than the agency with which the action, appeal, or petition is to be filed, the employee shall be treated as having timely filed the action, appeal, or petition as of the date it is filed with the proper agency.

(Added Pub. L. 95-454, title II, §205, Oct. 13, 1978, 92 Stat. 1140; amended Pub. L. 96-54, §2(a)(46), Aug. 14, 1979, 93 Stat. 384.)

#### REFERENCES IN TEXT

The General Schedule, referred to in subsec. (d)(6)(B), is set out under section 5332 of this title.

#### AMENDMENTS

1979—Subsec. (a)(1)(A). Pub. L. 96-54, §2(a)(46)(A), substituted “affected” for “effected”.

Subsec. (a)(1)(B)(i). Pub. L. 96-54, §2(a)(46)(B), substituted “2000e-16” for “2000e-16c”.

Subsec. (e)(1). Pub. L. 96-54, §2(a)(46)(C), (D), substituted “of this section” for “of this title” in subpar. (C), and “216(b)” for “216(d)” in provision following subpar. (C).

#### EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

#### EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

### § 7703. Judicial review of decisions of the Merit Systems Protection Board

(a)(1) Any employee or applicant for employment adversely affected or aggrieved by a final order or decision of the Merit Systems Protection Board may obtain judicial review of the order or decision.

(2) The Board shall be named respondent in any proceeding brought pursuant to this subsection, unless the employee or applicant for employment seeks review of a final order or decision on the merits on the underlying personnel action or on a request for attorney fees, in which case the agency responsible for taking the personnel action shall be the respondent.

(b)(1)(A) Except as provided in subparagraph (B) and paragraph (2) of this subsection, a peti-

tion to review a final order or final decision of the Board shall be filed in the United States Court of Appeals for the Federal Circuit. Notwithstanding any other provision of law, any petition for review shall be filed within 60 days after the Board issues notice of the final order or decision of the Board.

(B) A petition to review a final order or final decision of the Board that raises no challenge to the Board's disposition of allegations of a prohibited personnel practice described in section 2302(b) other than practices described in section 2302(b)(8), or 2302(b)(9)(A)(i), (B), (C), or (D) shall be filed in the United States Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction. Notwithstanding any other provision of law, any petition for review shall be filed within 60 days after the Board issues notice of the final order or decision of the Board.

(2) Cases of discrimination subject to the provisions of section 7702 of this title shall be filed under section 717(c) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16(c)), section 15(c) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(c)), and section 16(b) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 216(b)), as applicable. Notwithstanding any other provision of law, any such case filed under any such section must be filed within 30 days after the date the individual filing the case received notice of the judicially reviewable action under such section 7702.

(c) In any case filed in the United States Court of Appeals for the Federal Circuit, the court shall review the record and hold unlawful and set aside any agency action, findings, or conclusions found to be—

- (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (2) obtained without procedures required by law, rule, or regulation having been followed; or
- (3) unsupported by substantial evidence;

except that in the case of discrimination brought under any section referred to in subsection (b)(2) of this section, the employee or applicant shall have the right to have the facts subject to trial de novo by the reviewing court.

(d)(1) Except as provided under paragraph (2), this paragraph shall apply to any review obtained by the Director of the Office of Personnel Management. The Director may obtain review of any final order or decision of the Board by filing, within 60 days after the Board issues notice of the final order or decision of the Board, a petition for judicial review in the United States Court of Appeals for the Federal Circuit if the Director determines, in the discretion of the Director, that the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management and that the Board's decision will have a substantial impact on a civil service law, rule, regulation, or policy directive. If the Director did not intervene in a matter before the Board, the Director may not petition for review of a Board decision under this section unless the Director first petitions the Board for a reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the pro-

ceedings before the Board shall have the right to appear in the proceeding before the Court of Appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals.

(2) This paragraph shall apply to any review obtained by the Director of the Office of Personnel Management that raises no challenge to the Board's disposition of allegations of a prohibited personnel practice described in section 2302(b) other than practices described in section 2302(b)(8), or 2302(b)(9)(A)(i), (B), (C), or (D). The Director may obtain review of any final order or decision of the Board by filing, within 60 days after the Board issues notice of the final order or decision of the Board, a petition for judicial review in the United States Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction if the Director determines, in the discretion of the Director, that the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management and that the Board's decision will have a substantial impact on a civil service law, rule, regulation, or policy directive. If the Director did not intervene in a matter before the Board, the Director may not petition for review of a Board decision under this section unless the Director first petitions the Board for a reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceeding before the court of appeals. The granting of the petition for judicial review shall be at the discretion of the court of appeals.

(Added Pub. L. 95-454, title II, §205, Oct. 13, 1978, 92 Stat. 1143; amended Pub. L. 97-164, title I, §144, Apr. 2, 1982, 96 Stat. 45; Pub. L. 101-12, §10, Apr. 10, 1989, 103 Stat. 35; Pub. L. 105-311, §10(a), Oct. 30, 1998, 112 Stat. 2954; Pub. L. 112-199, title I, §108, Nov. 27, 2012, 126 Stat. 1469; Pub. L. 113-170, §2, Sept. 26, 2014, 128 Stat. 1894; Pub. L. 115-195, §2(a), (b), July 7, 2018, 132 Stat. 1510.)

#### AMENDMENTS

2018—Subsec. (b)(1)(B). Pub. L. 115-195, §2(a), substituted “A petition” for “During the 5-year period beginning on the effective date of the Whistleblower Protection Enhancement Act of 2012, a petition”.

Subsec. (d)(2). Pub. L. 115-195, §2(b), substituted “This paragraph” for “During the 5-year period beginning on the effective date of the Whistleblower Protection Enhancement Act of 2012, this paragraph”.

2014—Subsecs. (b)(1)(B), (d)(2). Pub. L. 113-170 substituted “5-year” for “2-year”.

2012—Subsec. (b)(1). Pub. L. 112-199, §108(a), added par. (1) and struck out former par. (1) which read as follows: “Except as provided in paragraph (2) of this subsection, a petition to review a final order or final decision of the Board shall be filed in the United States Court of Appeals for the Federal Circuit. Notwithstanding any other provision of law, any petition for review must be filed within 60 days after the date the petitioner received notice of the final order or decision of the Board.”

Subsec. (d). Pub. L. 112-199, §108(b), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “The Director of the Office of Personnel Management may obtain review of any final order or decision of the Board by filing, within 60 days after the date the Director received notice of the final order or decision of the Board, a petition for judicial review in the United States Court of Appeals for the Federal Circuit

if the Director determines, in his discretion, that the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management and that the Board's decision will have a substantial impact on a civil service law, rule, regulation, or policy directive. If the Director did not intervene in a matter before the Board, the Director may not petition for review of a Board decision under this section unless the Director first petitions the Board for a reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceeding before the Court of Appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals."

1998—Subsec. (b)(1). Pub. L. 105-311, §10(a)(1), substituted "within 60 days" for "within 30 days".

Subsec. (d). Pub. L. 105-311, §10(a)(2), in first sentence, inserted ", within 60 days after the date the Director received notice of the final order or decision of the Board," after "filing".

1989—Subsec. (a)(2). Pub. L. 101-12 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "The Board shall be the named respondent in any proceeding brought pursuant to this subsection, unless the employee or applicant for employment seeks review of a final order or decision issued by the Board under section 7701. In review of a final order or decision issued under section 7701, the agency responsible for taking the action appealed to the Board shall be the named respondent."

1982—Subsec. (b)(1). Pub. L. 97-164, §144(1), substituted "United States Court of Appeals for the Federal Circuit" for "Court of Claims or a United States court of appeals as provided in chapters 91 and 158, respectively, of title 28".

Subsec. (c). Pub. L. 97-164, §144(2), substituted "Court of Appeals for the Federal Circuit" for "Court of Claims or a United States court of appeals".

Subsec. (d). Pub. L. 97-164, §144(3), substituted "United States Court of Appeals for the Federal Circuit" for "United States Court of Appeals for the District of Columbia".

#### EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115-195, §2(c), July 7, 2018, 132 Stat. 1510, provided that: "The amendments made by this section [amending this section] shall take effect as if enacted on November 26, 2017."

#### EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-199 effective 30 days after Nov. 27, 2012, see section 202 of Pub. L. 112-199, set out as a note under section 1204 of this title.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-311, §10(b), Oct. 30, 1998, 112 Stat. 2954, provided that: "The amendments made by this section [amending this section] shall take effect on the date of enactment of this Act [Oct. 30, 1998], and apply to any suit, action, or other administrative or judicial proceeding pending on such date or commenced on or after such date."

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101-12, set out as a note under section 1201 of this title.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

#### EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

#### SAVINGS PROVISION

For effect of Pub. L. 101-12 on orders, rules, and regulations issued before effective date of Pub. L. 101-12, administrative proceedings pending at time provisions of Pub. L. 101-12 take effect, and suits and other proceedings as in effect immediately before effective date of Pub. L. 101-12, see section 7 of Pub. L. 101-12 set out as a note under section 1201 of this title.

### CHAPTER 79—SERVICES TO EMPLOYEES

Sec.	
7901.	Health service programs.
7902.	Safety programs.
7903.	Protective clothing and equipment.
7904.	Employee assistance programs relating to drug abuse and alcohol abuse.
7905.	Programs to encourage commuting by means other than single-occupancy motor vehicles.
7906.	Services of post-combat case coordinators.

#### AMENDMENTS

2011—Pub. L. 112-81, div. A, title XI, §1106(b), Dec. 31, 2011, 125 Stat. 1614, added item 7906.

1993—Pub. L. 103-172, §2(b), Dec. 2, 1993, 107 Stat. 1996, added item 7905.

1986—Pub. L. 99-570, title VI, §6004(b), Oct. 27, 1986, 100 Stat. 3207-159, added item 7904.

#### STATE OR LOCAL GOVERNMENT PROGRAMS ENCOURAGING EMPLOYEE USE OF PUBLIC TRANSPORTATION; FEDERAL AGENCY PARTICIPATION

Pub. L. 102-241, §44, Dec. 19, 1991, 105 Stat. 2226, provided that: "The Department of Transportation may include military personnel of the Coast Guard in any program in which the Department participates under section 629 of the Treasury, Postal Service and General Government Appropriations Act, 1991, Public Law 101-509 [set out below], notwithstanding section 629(c)(2) of that Act."

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

Pub. L. 101-509, title VI, §629, Nov. 5, 1990, 104 Stat. 1478, authorized Federal agencies and employees to participate in State or local government programs encouraging employees to use public transportation, directed General Accounting Office, not later than June 30, 1993, to conduct a study and submit a report on the implementation of such programs, and provided that this section was repealed effective Dec. 31, 1993.

#### § 7901. Health service programs

(a) The head of each agency of the Government of the United States may establish, within the limits of appropriations available, a health service program to promote and maintain the physical and mental fitness of employees under his jurisdiction.

(b) A health service program may be established by contract or otherwise, but only—

(1) after consultation with the Secretary of Health, Education, and Welfare and consideration of its recommendations; and

(2) in localities where there are a sufficient number of employees to warrant providing the service.

(c) A health service program is limited to—

(1) treatment of on-the-job illness and dental conditions requiring emergency attention;