



## REFERENCE GUIDE

### **PRIORITY PLACEMENT PROGRAM VS. REEMPLOYMENT PRIORITY LIST**

#### Background

A recent initial decision by a Merit Systems Protection Board Administrative Judge has highlighted the need to distinguish between the Department of Defense (DoD) Priority Placement Program (PPP) and the Reemployment Priority List (RPL). In this decision, the Administrative Judge (AJ) incorrectly determined that the MSPB had jurisdiction on matters concerning the PPP. The AJ made this decision due to his failure to understand that the PPP and RPL are separate and distinct programs.

#### Discussion

Under 5 CFR 330.201, Subpart B, each agency is required to establish and maintain a reemployment priority list or RPL for each commuting area in which it separates eligible employees due to reduction in force or compensable injury. 5 CFR 330.209 states that "[a]n individual who believes that his or her reemployment priority rights under this subpart have been violated because of the employment of another person who otherwise could not have been appointed properly may appeal to the Merit Systems Protection Board under the provisions of the Board's regulations." 5 CFR 330.203(b) requires the agency to notify employees of their appeal rights concerning RPL "at the time it gives a specific RIF notice of separation or a Certification of Expected Separation."

The PPP is an administrative program unique to the DoD. Its purpose is to promote stability of employment for civilian employees affected by changing manpower requirements and to provide maximum opportunity for placement in other DoD positions. Unlike the RPL, the PPP is not required by statute or government-wide regulation. It is a placement program in addition to the RPL. It clearly is not DoD's version of the RPL required by 5 CFR 330.201. In addition, the PPP does not provide appeal rights such as those provided for RPL.

In the AJ decision, the employee was appealing his non-selection for a position through the PPP. When another employee was offered a position through the PPP, the employee filed an appeal alleging his RPL rights had been violated. However, in this particular case, the situation did not concern RPL. The agency filed a motion to dismiss the appeal since the MSPB did not have jurisdiction. Unfortunately, the agency's motion did not make a clear distinction between RPL and PPP. As a result, the AJ assumed that PPP was





DoD's version of the RPL required by 5 CFR 330.201 and determined that the MSPB had jurisdiction. It should be noted that the agency was able to find a position for the employee through PPP at the time this case went before the AJ. Therefore, the case was settled without looking at the merits of the case.

Even though this case was settled, there are concerns that the MSPB may continue to confuse the PPP with RPL. Fortunately, administrative judge decisions are not precedent setting. Therefore, this decision will not serve as a basis for future decisions concerning the MSPB's jurisdiction on PPP issues. It does, however, serve as a warning to DoD installations involved in MSPB appeals of PPP issues. When an installation is appearing before an AJ, a detailed argument must be provided that clearly distinguishes between PPP and RPL. This will ensure that the MSPB has the necessary information to make a proper and informed decision concerning appeal rights, or lack of appeal rights, of actions concerning the PPP.

If you have any questions concerning this guide or any other NAF labor relations matter, please contact the Labor Team at (703) 696-6301, Team 3, or DSN 426-6301, Team 3.

References:

- 5 CFR § 330.201
- 5 CFR § 330.203
- 5 CFR § 330.209

