



U.S. Department of Justice

Justice Management Division


Human Resources

Washington, D.C. 20530

NOV 05 2009

MEMORANDUM FOR COMPONENT HUMAN RESOURCES OFFICERS

FROM:


Rod Markham
Director, Human Resources

SUBJECT:

Pass Over of Compensably-Disabled Preference Eligibles for Excepted Service Positions

The Office of Personnel Management (OPM) issued guidance in March 2009 on the U.S. Court of Appeals for the Federal Circuit's decision in *Gingery v. Department of Defense*. As a result of the decision, Components must apply competitive service rules to pass overs of preference eligibles with a 30% or more compensable service-connected disability for excepted service positions that are subject to the appointment procedures in 5 C.F.R. part 302.

For a copy of the OPM memo implementing this requirement, go to:

<http://www.chcoc.gov/Transmittals/TransmittalDetails.aspx?TransmittalId=2119>.

As a reminder, Components must submit to Justice Management Division Human Resources (JMD HR) all pass over requests for excepted service positions involving preference eligibles with a 30% or more compensable service-connected disability prior to selection. Upon conclusion of our review, JMD HR will forward the request on behalf of the Component to OPM for adjudication and notify the Component of our action.

In accordance with the decision above, Components must perform the following when requesting pass over approval of a 30% or more compensably-disabled preference eligible in order to select a non-preference eligible for excepted service positions:

- Document the selecting official's reason(s) for passing over the preference eligible.
- Justify the reason for passing over a preference eligible in order to select a non-preference eligible (stating that the non-veteran is "better" qualified is not sufficient -- the reason must relate directly to the veteran's qualifications and/or fitness for employment).
- Notify the preference eligible of the proposed pass over, the reasons, and of his/her right to respond to such reasons to OPM within 15 days of the date of such notification *at the same time* JMD HR forwards the pass over request to OPM. OPM requires proof prior to completion of its review that DOJ sent pass over notification to the preference eligible's last known address on a timely basis.

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Excepted Service Positions

This memo covers all excepted service positions that are subject to the appointment procedures in 5 CFR 302. For a complete list of positions *exempt* from the appointment procedures under 5 CFR 302, see 5 CFR 302.101(c). Veterans preference, and the pass over requirements listed in this memo, apply to all other excepted service positions.

If you need additional information, my point of contact is Kristen Klein. She may be reached at (202) 305-3134, or by electronic mail at Kristen.Klein@usdoj.gov.