



U.S. Department of Justice

Justice Management Division

Human Resources

Washington, D.C. 20530

SEP 8 2009

MEMORANDUM FOR COMPONENT HUMAN RESOURCES OFFICERS

FROM:

Rod Markham
Director, Human Resources

Handwritten signature of Rod Markham in black ink, with the initials "RM" written to the right of the signature.

SUBJECT:

Isabella vs. Department of State

On August 10, 2007, the Merit Systems Protection Board (MSPB) ruled that the Department of State violated an appellant's veterans' preference rights by failing to waive the maximum entry age requirement for the position of Diplomatic Security Service (DSS) Special Agent, an excepted service position established by the Secretary of State pursuant to the Foreign Service Act of 1980. *Isabella v. Department of State*, 106 M.S.P.R. 333 (2007), *aff'd*, *Isabella v. Department of State*, 109 M.S.P.R. 453 (2008). The MSPB noted that 5 U.S.C. §§ 3312(a)(1) and 3320 require agencies to waive age requirements in determining the qualifications of a preference eligible for appointment to a position in the competitive or excepted service unless the requirement is essential to the performance of the duties of the position. After reviewing the record, the MSPB concluded that the maximum entry age for the position of DSS Special Agent is not essential to the performance of the duties of the position. The Office of Personnel Management (OPM) petitioned for reconsideration of the final decision, and the MSPB denied the petition and affirmed the decision on July 2, 2008.

Based on the Board's decision in *Isabella*, OPM issued guidance on August 26, 2009, (memorandum attached) which stated that qualified preference eligibles may now apply and be considered for vacancies regardless of whether they meet the maximum age requirements identified at 5 U.S.C. § 3307. If the agency decides that age is not essential to the position, then the agency must waive the maximum entry-age requirement for veterans' preference eligible applicants.

If you or your staff need additional information or assistance, please contact Jeanarta C. McEachron, Assistant Director, HR Policy and Advisory Services, at (202) 514-3663 or by electronic mail at Jeanarta.C.McEachron@usdoj.gov.

Attachment