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	)	
	)	
	)	Docket No. Unassigned
Appellants,	)	
	)	
v.	)	
	)	
DEPARTMENT OF VETERANS	)	Date: March 4, 2025
AFFAIRS,	)	
Agency.	)	
	)	

This is a class action appeal filed by [REDACTED]  
[REDACTED] on behalf of the following class: All persons who were subject to separation from federal service on the grounds that they were probationary or trial period employees of the Department of Veterans Affairs (VA) (“Agency”) and who were not provided the rights accorded to employees under a Reduction in Force (“RIF”), between February 10, 2025, and the first day of a hearing on Appellants’ claims. The filing of this putative class action tolls the time limit to file individual appeals for persons encompassed with the class defined above. 5 C.F.R. §§ 1201.27(a)-(b).

The named Appellants seek to represent the individuals subjected to the VA's unlawful RIF. They are five former VA employees, who are spread geographically and across the agency's subagencies and offices. [REDACTED] worked as a Data Scientist at the Veterans Benefits Administration in Los Angeles, California. [REDACTED] worked as a Customer Experience Strategist at the Veterans

Experience Office within the Office of the Secretary in Washington, D.C. [REDACTED] worked as Staff Accountant at the Office of Finance in Washington, D.C. [REDACTED] worked as a Security Assistant for the VA police in San Diego, California. And [REDACTED] worked as a Supervisory Transportation Specialist at the Veterans Health Administration in Battle Creek, Michigan. All five were terminated when they received letters from the Agency between February 13, 2025, and February 24, 2025, which identically stated that they were being removed because they were probationary employees. None were afforded the rights enumerated in 5 C.F.R. Part 351 for federal employees undergoing RIFs, either in these letters or otherwise.

Appellants request this matter be heard as a multi-region class appeal under 5 C.F.R. § 1201.27, as a class appeal is the fairest and most efficient way to adjudicate the appeal and the representative parties will adequately protect the interests of all parties. 5 C.F.R. § 1201.27(a). This appeal also satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, which guide the MSPB's consideration of class appeals. *See* 5 C.F.R. § 1201.27(c). Specifically, this appeal satisfies the following requirements: numerosity, as the Agency issued two press releases indicating that the agency subjected over 1,000 employees to the same mass removal action on February 13, 2025,<sup>1</sup> then subjected another 1,400 employees to the same mass removal action on February 24, 2025,<sup>2</sup> commonality, as members of the class were subject to the same generic notice of removal and none were granted the rights guaranteed by the laws governing RIFs; typicality, as Appellants were subject to the same removal procedures as members of the proposed class and seek the same relief; and adequacy of representation, as Appellants' interests do not conflict with the interests of the class and class counsel have the extensive experience before the MSPB and experience litigating class actions that will ensure effective representation of the proposed class. *See* Fed. R. Civ. P. 23(a). In addition, common questions about the lawfulness of the method of separating members of the class will predominate over any individual questions that may exist, litigation of these claims together will be superior than if they were adjudicated separately, and the adjudication as a class can be conducted manageably. *See* Fed. R. Civ. P. 23(b).

Appellants intend to supplement this notice of appeal with supporting law and evidence on the propriety of proceeding as a class appeal. Appellants

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<sup>1</sup> Press Release, United States Dept. of Veterans Affairs, VA Dismisses More Than 1,000 Employees (Feb. 13, 2025), <https://perma.cc/RD6N-8N4H>.

<sup>2</sup> Press Release, United States Dept. of Veterans Affairs, VA Dismisses More Than 1,400 Probationary Employees (Feb. 24, 2025), <https://perma.cc/RD6N-8N4H>.

respectfully request consideration of this supplemental submission prior to any decision on class certification. Appellants further request that the MSPB set a limited discovery schedule to permit development of the record supporting class certification. *See Beasley v. I.R.S.*, 15 M.S.P.R. 16, 21 n.7 (1983).

Respectfully submitted,

/s/ Daniel M. Rosenthal  
Daniel M. Rosenthal  
Alice C. Hwang  
Charlotte H. Schwartz  
Sejal Singh

James & Hoffman, P.C.  
1629 K Street NW, Suite 1050  
Washington, DC 20006  
Tel: (202) 496-0500  
Fax: (202) 496-0555  
dmrosenthal@jamhoff.com  
achwang@jamhoff.com  
chschwartz@jamhoff.com  
ssingh@jamhoff.com

Dated: March 4, 2025

*Attorneys for Appellants*

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Appellants' Notice of Appeal and Request for Adjudication as a Class was served via personal delivery and certified mail to the Washington Regional Office, with a copy to the Office of Regional Operations, this 4th of March 2025, addressed as follows.

MSPB Washington DC Regional Office  
1901 S. Bell Street, Suite 950  
Arlington, VA 22202  
Fax: (703) 756-7112

MSPB Office of Regional Operations  
1615 M Street, NW  
Washington, DC 20419  
Fax: (202) 653-7130

/s/ Daniel M. Rosenthal  
Daniel M. Rosenthal  
James & Hoffman, P.C.  
1629 K Street NW, Suite 1050  
Washington, DC 20006  
Tel: (202) 496-0500  
Fax: (202) 496-0555  
dmrosenthal@jamhoff.com

*Attorney for Appellants*



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**FW: Termination During Probation Notice**

2 messages

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Thu, Feb 13, 2025 at 4:32 PM**From:** Therit, Tracey <[Tracey.Therit@va.gov](mailto:Tracey.Therit@va.gov)>**Sent:** Thursday, February 13, 2025 4:11 PM**To:** [REDACTED]**Subject:** Termination During Probation Notice

February 13, 2025

MEMORANDUM FOR [REDACTED]

**FROM:** Tracey Therit

Chief Human Capital Officer

**SUBJECT:** Notification of Termination During Probationary Period**REFERENCES:** 5 U.S.C. § 7511

5 U.S.C. § 3321(a)

5 C.F.R. §§ 315.803 and 804

This is to provide notification that the Agency is removing you from federal service consistent with the above references.

On [REDACTED], the Agency appointed you to your position. As documented on your appointment Standard Form 50 (SF-50), your appointment is subject to a probationary/trial period. The agency also informed you of this requirement in the job opportunity announcement for the position.

Guidance from the Office of Personnel Management (“OPM”) states, “An appointment is not final until the probationary period is over,” and the probationary period is part of “the hiring process for employees.”<sup>[1]</sup> “A probationer is still an applicant for a finalized appointment to a particular position as well as to the Federal service.” <sup>[2]</sup> “Until the probationary period has been completed,” a probationer has “the burden to demonstrate why it is in the public interest for the Government to finalize an appointment to the civil service for this particular individual.”<sup>[3]</sup>

The Agency finds, based on your performance, that you have not demonstrated that your further employment at the Agency would be in the public interest. For this reason, the Agency informs you that the Agency is removing you from your position with the Agency and the federal civil service effective February 13, 2025.

You may seek review of this action. Such reviews include:

- a. appealing this action to the Merit Systems Protection Board (MSPB) if you allege you were discriminated against due to marital status or partisan political reasons or your removal was not effected in accordance with the procedural requirements of 5 C.F.R. 315.805; or
- b. requesting corrective action before the Office of Special Counsel (OSC) for prohibited personnel practices; or
- c. pursuing a discrimination complaint with the Office of Resolution Management (ORM).

Please see below for details on your ability to file some of these claims concurrently. If you are not a supervisor, you shall be deemed to have exercised your option to appeal this action at such time as you timely initiate action to appeal to MSPB. If you believe this action constitutes a prohibited personnel practice, other than discrimination, under 5 U.S.C. § 2302(b), including retaliation for protected whistleblowing, you may elect to file either an appeal to MSPB, or request corrective action from OSC, and your election is based on which election you file first. If you are not a supervisor, your election of one of these options precludes the other. If you are a supervisor, the election of remedies does not apply to you, and you may pursue all three options. If you believe that this action was taken against you for discriminatory reasons, other than marital status or political affiliation, refer to the paragraph immediately below.

Equal Employment Opportunity Commission (EEOC): If you believe this action is based on discrimination on the basis of race, color, religion, sex, national origin, pregnancy, age or disability, you may file a complaint of discrimination. If you elect to file a complaint of discrimination, you may do so by contacting the Office of Resolution Management (ORM) at 1-888-566-3982. Such a complaint will be processed in accordance with EEOC regulations at 29 C.F.R., Part 1614. Your initial contact with the ORM office must be done within 45 calendar days of the effective date of this action.

If this action is also appealable to MSPB, such a discrimination complaint may be a “mixed case complaint,” or if you raise the issue of discrimination in any appeal to MSPB, it

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Separating VA employees are required to return their PIV card to their PIV issuing office and their government furnished IT equipment and peripherals to the Office of Information Technology (OIT) for redeployment or disposition.

### GFE Equipment

You will immediately take your equipment to the closest VA medical center or [810 Vermont Avenue](#) to turn in your IT equipment. The local OIT staff will collect all assigned government furnished equipment (GFE), including peripherals such as monitors, docking stations, printers, etc.

Regardless of the original issuing site, all local IT teams will accept returned GFE and will adhere to local procedures for equipment accountability.

A return receipt for the equipment will be issued to the employee by local IT staff to acknowledge receipt of the employee's GFE and peripherals.

### OIT Facility Requirements

Return any non-IT equipment, office and/or card keys, and PIV card to local facility.

If there is lost equipment a report of survey needs to be completed before you separate.

We appreciate your service to the Agency and wish you the greatest of success in your future endeavors. If you have any questions concerning this matter or the rights described above, or if you need assistance or additional information, please contact [Ochcofrontoffice@va.gov](mailto:Ochcofrontoffice@va.gov).

/s/

Tracey Therit

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[1] OPM, [Practical Tips for Supervisors of Probationers](#).

[2] See U.S. Merit Systems Protection Board Report to the President and Congress, [The Probationary Period: A Critical Assessment Opportunity](#) (August 2005)

[3] *Id.*



[REDACTED] has sent you a protected message.



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[Privacy Statement](#)

[Learn More](#) on email encryption.

Microsoft Corporation, One [Microsoft Way, Redmond, WA 98052](#)



[REDACTED]  
390K



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**FW: Termination During Probation Notice**

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Thu, Feb 13, 2025 at 8:40 PM

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**From:** Therit, Tracey <[Tracey.Therit@va.gov](mailto:Tracey.Therit@va.gov)>  
**Sent:** Thursday, February 13, 2025 7:11 PM  
**To:** [REDACTED]  
**Subject:** Termination During Probation Notice

February 13, 2025

MEMORANDUM FOR [REDACTED]

FROM: Tracey Therit  
Chief Human Capital Officer

SUBJECT: Notification of Termination During Probationary Period

REFERENCES: 5 U.S.C. § 7511  
5 U.S.C. § 3321(a)  
5 C.F.R. §§ 315.803 and 804

This is to provide notification that the Agency is removing you from federal service consistent with the above references.

On [REDACTED], the Agency appointed you to your position. As documented on your appointment Standard Form 50 (SF-50), your appointment is subject to a probationary/trial period. The agency also informed you of this requirement in the job opportunity announcement for the position.

Guidance from the Office of Personnel Management ("OPM") states, "An appointment is not final until the probationary period is over," and the probationary period is part of "the

hiring process for employees.”[1] “A probationer is still an applicant for a finalized appointment to a particular position as well as to the Federal service.” [2] “Until the probationary period has been completed,” a probationer has “the burden to demonstrate why it is in the public interest for the Government to finalize an appointment to the civil service for this particular individual.”[3]

The Agency finds, based on your performance, that you have not demonstrated that your further employment at the Agency would be in the public interest. For this reason, the Agency informs you that the Agency is removing you from your position with the Agency and the federal civil service effective February 13, 2025.

You may seek review of this action. Such reviews include:

- a. appealing this action to the Merit Systems Protection Board (MSPB) if you allege you were discriminated against due to marital status or partisan political reasons or your removal was not effected in accordance with the procedural requirements of 5 C.F.R. 315.805; or
- b. requesting corrective action before the Office of Special Counsel (OSC) for prohibited personnel practices; or
- c. pursuing a discrimination complaint with the Office of Resolution Management (ORM).

Please see below for details on your ability to file some of these claims concurrently. If you are not a supervisor, you shall be deemed to have exercised your option to appeal this action at such time as you timely initiate action to appeal to MSPB. If you believe this action constitutes a prohibited personnel practice, other than discrimination, under 5 U.S.C. § 2302(b), including retaliation for protected whistleblowing, you may elect to file either an appeal to MSPB, or request corrective action from OSC, and your election is based on which election you file first. If you are not a supervisor, your election of one of these options precludes the other. If you are a supervisor, the election of remedies does not apply to you, and you may pursue all three options. If you believe that this action was taken against you for discriminatory reasons, other than marital status or political affiliation, refer to the paragraph immediately below.

Equal Employment Opportunity Commission (EEOC): If you believe this action is based on discrimination on the basis of race, color, religion, sex, national origin, pregnancy, age or disability, you may file a complaint of discrimination. If you elect to file a complaint of discrimination, you may do so by contacting the Office of Resolution Management (ORM) at 1-888-566-3982. Such a complaint will be processed in accordance with EEOC regulations at 29 C.F.R., Part 1614. Your initial contact with the ORM office must be done within 45 calendar days of the effective date of this action.

If this action is also appealable to MSPB, such a discrimination complaint may be a “mixed case complaint,” or if you raise the issue of discrimination in any appeal to MSPB, it may be a “mixed case appeal.” You may not initially file both a mixed case complaint and a mixed case appeal on the same matter, unless you are a supervisor. If you are not a

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You will immediately take your equipment to the closest VA medical center or [810 Vermont Avenue](#) to turn in your IT equipment. The local OIT staff will collect all assigned government furnished equipment (GFE), including peripherals such as monitors, docking stations, printers, etc.

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We appreciate your service to the Agency and wish you the greatest of success in your future endeavors. If you have any questions concerning this matter or the rights described above, or if you need assistance or additional information, please contact [Ochcofrontoffice@va.gov](mailto:Ochcofrontoffice@va.gov).

/s/

Tracey Therit

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[1] OPM, *Practical Tips for Supervisors of Probationers*.

[2] See U.S. Merit Systems Protection Board Report to the President and Congress, *The Probationary Period: A Critical Assessment Opportunity* (August 2005)

[3] *Id.*

2/20/25, 11:51 AM

Gmail - FW: Termination During Probation Notice



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## FW: Termination During Probation Notice

1 message

Fri, Feb 14, 2025 at 7:04 AM

Regards,

Staff Accountant

Management Reports Service

Office of Management, Office of Finance



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**From:** Therit, Tracey <[Tracey.Therit@va.gov](mailto:Tracey.Therit@va.gov)>

**Sent:** Thursday, February 13, 2025 7:10 PM

**To:**

**Subject:** Termination During Probation Notice

2/20/25, 11:51 AM

Gmail - FW: Termination During Probation Notice  
February 13, 2025

MEMORANDUM FOR [REDACTED]

FROM: Tracey Therit  
Chief Human Capital Officer

SUBJECT: Notification of Termination During Probationary Period

REFERENCES: 5 U.S.C. § 7511  
5 U.S.C. § 3321(a)  
5 C.F.R. §§ 315.803 and 804

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2/20/25, 11:51 AM

Gmail - FW: Termination During Probation Notice

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2/20/25, 11:51 AM

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/s/

Tracey Therit

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[1] OPM, *Practical Tips for Supervisors of Probationers*.

[2] See U.S. Merit Systems Protection Board Report to the President and Congress, *The Probationary Period: A Critical Assessment Opportunity* (August 2005)

[3] *Id.*



**FW: Termination During Probation Notice**

1 message

[Redacted]  
To: [Redacted]

Mon, Feb 24, 2025 at 2:16 PM

**From:** OCHCO Probationary BUE Communications <[OCHCOProbationaryBUECommunications@va.gov](mailto:OCHCOProbationaryBUECommunications@va.gov)>  
**Sent:** Monday, February 24, 2025 1:17 PM  
**To:** [Redacted]  
**Subject:** Termination During Probation Notice

February 24, 2025

MEMORANDUM FOR [Redacted]

**FROM:** Tracey Therit  
Chief Human Capital Officer

**SUBJECT:** Notification of Termination During Probationary Period

**REFERENCES:** 5 U.S.C. § 7511  
5 U.S.C. § 3321(a)  
5 C.F.R. §§ 315.801, 802, 803 and 804  
VA Handbook 5021, Part III

This is to provide notification that the Agency is removing you from federal service consistent with the above references.

On [Redacted] the Agency appointed you to your position. As documented on your appointment Standard Form 50 (SF-50), your appointment is subject to a probationary/trial period. The agency also informed you of this requirement in the job opportunity announcement for the position.

Guidance from the Office of Personnel Management (“OPM”) states, “An appointment is not final until the probationary period is over,” and the probationary period is part of “the hiring process for employees.”<sup>[1]</sup> “A probationer is still an applicant for a finalized appointment to a particular position as well as to the Federal service.” <sup>[2]</sup> “Until the probationary period has been completed,” a probationer has “the burden to demonstrate why it is in the public interest for the Government to finalize an appointment to the civil service for this particular individual.”<sup>[3]</sup>

Unfortunately, the Agency finds that your performance has not met the burden to demonstrate that your further employment at the Agency would be in the public interest. For this reason, the Agency informs you that the Agency is removing you from your position with the Agency and the federal civil service effective February 24, 2025.

You may seek review of this action. Such reviews may include:

- a. appealing this action to the Merit Systems Protection Board (MSPB) if you allege you were discriminated against due to marital status or partisan political reasons or your removal was not effected in accordance with the procedural requirements of 5 C.F.R. 315.805; or
- b. requesting corrective action before the Office of Special Counsel (OSC) for prohibited personnel practices; or
- c. pursuing a discrimination complaint with the Office of Resolution Management (ORM).

Please see below for details on your ability to file some of these claims concurrently. If you believe this action constitutes a prohibited personnel practice, other than discrimination, under 5 U.S.C. § 2302(b), including retaliation for protected whistleblowing, you may elect one, and only one, of the following: an appeal to MSPB, a request for corrective action from OSC, and your election is based on which election you file first. Your election of one of these options precludes the other. If you believe that this action was taken against you for discriminatory reasons, other than marital status or political affiliation, refer to the paragraph immediately below.

**Equal Employment Opportunity Commission (EEOC):** If you believe this action is based on discrimination on the basis of race, color, religion, sex, national origin, pregnancy, age or disability, you may file a complaint of discrimination. If you elect to file a complaint of discrimination, you may do so by contacting the Office of Resolution Management (ORM) at 1-888-566-3982. Such a complaint will be processed in accordance with EEOC regulations at 29 C.F.R., Part 1614. Your initial contact with the ORM office must be done within 45 calendar days of the effective date of this action.

If this action is also appealable to MSPB, such a discrimination complaint may be a “mixed case complaint,” or if you raise the issue of discrimination in any appeal to MSPB, it may be a “mixed case appeal.” You may not initially file both a mixed case complaint and a mixed case appeal on the same matter. Whichever you file first, the MSPB appeal or the complaint of discrimination, will be considered an election to proceed in that forum and will determine the procedures that will be followed.

**Merit Systems Protection Board (MSPB):** If you appeal to the MSPB, your appeal may be submitted by mail, facsimile, by commercial overnight delivery, by electronic filing the MSPB Appeal Form (<https://e-appeal.mspb.gov>), or in person at any time after you receive this letter, but not later than 30 calendar days after the separation has been effected, or 30 calendar days after the date of the your receipt of this decision, whichever is later. The address to mail your appeal can be found here: U.S. Merit Systems Protection Board | Contacts and Locations (<https://www.mspb.gov/about/contact.htm>). You must submit an original and one copy of both your appeal and all attachments. If you do not submit an appeal within the time set by statute, regulation, or order of a judge, it will be dismissed as untimely filed unless a good reason for the delay is shown. The judge will provide you an opportunity to show why the appeal should not be dismissed as untimely. A copy of the form is available by request if you are unable to access it at the MSPB website. Please refer to the MSPB website ([www.mspb.gov](http://www.mspb.gov)) for information regarding the appeals process and procedures that must be followed. You may be represented by an attorney or other representative of your choice. If you believe this action was taken against you for discriminatory reasons, refer to the paragraph on EEOC. If you decide to file an appeal with MSPB, you should notify the Board that the agency’s point of contact for this appeal is [Ochcofrontoffice@va.gov](mailto:Ochcofrontoffice@va.gov)

**Office of Special Counsel (OSC):** If you elect to request corrective action by the OSC’s Complaints Examining Unit (OSC Appeal Form) (<https://osc.gov/>), your complaint will be limited to a determination as to whether the agency took one or more personnel actions against you in violation of 5 U.S.C. § 2302(b) (prohibited personnel practices). This can include, but is not limited to, claims of reprisal for whistleblowing and/or engaging in protected activity. If you elect to request corrective action with OSC, you will have waived your right to file an appeal with MSPB (if eligible), regarding the same matter, except as follows. If you are making a covered claim of retaliation for engaging in certain protected activities, or for making protected disclosures and OSC terminates its investigation and/or has not timely notified you it will seek corrective action, you may have the right to file an individual right of action (IRA) appeal to the MSPB. Such an appeal will be limited to an adjudication of whether you proved that your protected activity or disclosure was a contributing factor in the effected action (5 U.S.C. § 1214; 5 U.S.C. § 1221).

Whichever option you may choose to pursue regarding this action (an appeal to the MSPB, a request for corrective action to OSC, a discrimination complaint) shall be considered an election by you to proceed under that appeal process. However, you may still concurrently file a corrective action to OSC and a discrimination complaint.

Separating VA employees are required to return their PIV card to their PIV issuing office and their government furnished IT equipment and peripherals to the Office of Information Technology (OIT) for redeployment or disposition.

### GFE Equipment

You will immediately take your equipment to the closest VA medical center, or [810 Vermont Avenue](#) (there will be a table on the first floor at the entrance to the building) to turn in your IT equipment. The local OIT staff will collect all assigned government furnished equipment (GFE), including peripherals such as monitors, docking stations, printers, etc.

Regardless of the original issuing site, all local IT teams will accept returned GFE and will adhere to local procedures for equipment accountability.

A return receipt for the equipment will be issued to the employee by local IT staff to acknowledge receipt of the employee's GFE and peripherals.

### OIT Facility Requirements

Return any non-IT equipment, office and/or card keys, and PIV card to local facility.

If there is lost equipment a report of survey needs to be completed before you separate.

We appreciate your service to the Agency and wish you the greatest of success in your future endeavors. If you have any questions concerning this matter or the rights described above, or if you need assistance or additional information, please contact [OCHCOProbationaryBUECommunications@va.gov](mailto:OCHCOProbationaryBUECommunications@va.gov).

/s/

Tracey Therit

1. OPM, [Practical Tips for Supervisors of Probationers](#).
2. See U.S. Merit Systems Protection Board Report to the President and Congress, [The Probationary Period: A Critical Assessment Opportunity](#) (August 2005)
3. *Id.*

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# FW: Termination During Probation Notice

1 message

Fri, Feb 14, 2025 at 07:34

To: [REDACTED]

**From:** Therit, Tracey <Tracey.Therit@va.gov>

**Sent:** Thursday, February 13, 2025 7:13 PM

**To:** [REDACTED]

**Subject:** Termination During Probation Notice

February 13, 2025

MEMORANDUM FOR [REDACTED]

**FROM:** Tracey Therit  
Chief Human Capital Officer

**SUBJECT:** Notification of Termination During Probationary  
Period

**REFERENCES:** 5 U.S.C. § 7511  
5 U.S.C. § 3321(a)  
5 C.F.R. §§ 315.803 and 804

This is to provide notification that the Agency is removing you from federal service consistent with the above references.

On [REDACTED], the Agency appointed you to your position. As documented on your appointment Standard Form 50 (SF-50), your appointment is subject to a probationary/trial period. The agency also informed you of this requirement in the job opportunity announcement for the position.

Guidance from the Office of Personnel Management (“OPM”) states, “An appointment is not final until the probationary period is over,” and the probationary period is part of “the hiring process for employees.”<sup>[1]</sup> “A probationer is still an applicant for a finalized appointment to a particular position as well as to the Federal service.”<sup>[2]</sup> “Until the probationary period has been completed,” a probationer has “the burden to demonstrate why it is in the public interest for the Government to finalize an appointment to the civil service for this particular individual.”<sup>[3]</sup>

The Agency finds, based on your performance, that you have not demonstrated that your further employment at the Agency would be in the public interest. For this reason, the Agency informs you that the Agency is removing you from your position with the Agency and the federal civil service effective February 13, 2025.

You may seek review of this action. Such reviews include:

- a. a. appealing this action to the Merit Systems Protection Board (MSPB) if you allege you were discriminated against due to marital status or partisan political reasons or your removal was not effected in accordance with the procedural requirements of 5 C.F.R. 315.805; or
- b. requesting corrective action before the Office of Special Counsel (OSC) for prohibited personnel practices; or
- c. pursuing a discrimination complaint with the Office of Resolution Management (ORM).



Please see below for details on your ability to file some of these claims concurrently. If you are not a supervisor, you shall be deemed to have exercised your option to appeal this action at such time as you timely initiate action to appeal to MSPB. If you believe this action constitutes a prohibited personnel practice, other than discrimination, under 5 U.S.C. § 2302(b), including retaliation for protected whistleblowing, you may elect to file either an appeal to MSPB, or request corrective action from OSC, and your election is based on which election you file first. If you are not a supervisor, your election of one of these options precludes the other. If you are a supervisor, the election of remedies does not apply to you, and you may pursue all three options. If you believe that this action was taken against you for discriminatory reasons, other than marital status or political affiliation, refer to the paragraph immediately below.

Equal Employment Opportunity Commission (EEOC): If you believe this action is based on discrimination on the basis of race, color, religion, sex, national origin, pregnancy, age or disability, you may file a complaint of discrimination. If you elect to file a complaint of discrimination, you may do so by contacting the Office of Resolution Management (ORM) at 1-888-566-3982. Such a complaint will be processed in accordance with EEOC regulations at 29 C.F.R., Part 1614. Your initial contact with the ORM office must be done within 45 calendar days of the effective date of this action.

If this action is also appealable to MSPB, such a discrimination complaint may be a “mixed case complaint,” or if you raise the issue of discrimination in any appeal to MSPB, it may be a “mixed case appeal.” You may not initially file both a mixed case complaint and a mixed case appeal on the same matter, unless you are a supervisor. If you are not a supervisor, whichever you file first, the MSPB appeal or the complaint of discrimination, will be considered an election to proceed in that forum and will determine the procedures that will be followed. If you are a supervisor, you may elect both MSPB and EEOC.

Merit Systems Protection Board (MSPB): If you appeal to the MSPB, your appeal may be submitted by mail, facsimile, by commercial overnight delivery, by electronic filing the MSPB Appeal Form (<https://e-appeal.mspb.gov>), or in person at any time after you receive this letter, but not later than 30 calendar days after the separation has been effected, or 30 calendar days after the date of the your receipt of this decision, whichever is later. The address to mail your appeal can be found here: [U.S. Merit Systems Protection Board | Contacts and Locations \(https://www.mspb.gov/about/contact.htm\)](https://www.mspb.gov/about/contact.htm). You must submit an original and one copy of both your appeal and all attachments. If you do not submit an appeal within the time set by statute, regulation, or order of a judge, it will be dismissed as untimely filed unless a good reason for the delay is shown. The judge will provide you an opportunity to show why the appeal should not be dismissed as untimely. A copy of the form is available by request if you are unable to access it at the MSPB website. Please refer to the MSPB website ([www.mspb.gov](http://www.mspb.gov)) for information regarding the appeals process and procedures that must be followed. You may be represented by an attorney or other representative of your choice. If you believe this action was taken against you for discriminatory reasons, refer to the paragraph on EEOC. If you decide to file an appeal with MSPB, you should notify the Board that the agency's point of contact for this appeal is [Ochcofrontoffice@va.gov](mailto:Ochcofrontoffice@va.gov)

Office of Special Counsel (OSC): If you elect to request corrective action by the OSC's Complaints Examining Unit (OSC Appeal Form) (<https://osc.gov/>), your complaint will be limited to a determination as to whether the agency took one or more personnel actions against you in violation of 5 U.S.C. § 2302(b) (prohibited personnel practices). This can include, but is not limited to, claims of reprisal for whistleblowing and/or engaging in protected activity. If you are not a supervisor and you elect to request corrective action with OSC, you will have waived your right to file an appeal with MSPB (if eligible), regarding the same matter, except as follows. If you are making a covered claim of retaliation for engaging in certain

protected activities, or for making protected disclosures and OSC terminates its investigation and/or has not timely notified you it will seek corrective action, you may have the right to file an individual right of action (IRA) appeal to the MSPB. Such an appeal will be limited to an adjudication of whether you proved that your protected activity or disclosure was a contributing factor in the effected action (5 U.S.C. § 1214; 5 U.S.C. § 1221). If you are a supervisor, you may pursue remedies from MSPB and OSC concurrently.

If you are not a supervisor, whichever option you may choose to pursue regarding this action (an appeal to the MSPB, a request for corrective action to OSC, or a discrimination complaint), shall be considered an election by you to proceed under that appeal process. However, if you are not a supervisor, you may still concurrently file a corrective action to OSC and a discrimination complaint. If you are a supervisor, you may elect all three remedies concurrently.

Separating VA employees are required to return their PIV card to their PIV issuing office and their government furnished IT equipment and peripherals to the Office of Information Technology (OIT) for redeployment or disposition.

### GFE Equipment

You will immediately take your equipment to the closest VA medical center or 810 Vermont Avenue to turn in your IT equipment. The local OIT staff will collect all assigned government furnished equipment (GFE), including peripherals such as monitors, docking stations, printers, etc.

Regardless of the original issuing site, all local IT teams will accept returned GFE and will adhere to local procedures for equipment accountability.

A return receipt for the equipment will be issued to the employee by local IT staff to acknowledge receipt of the employee's GFE and peripherals.

### OIT Facility Requirements

Return any non-IT equipment, office and/or card keys, and PIV card to local facility.

If there is lost equipment a report of survey needs to be completed before you separate.

We appreciate your service to the Agency and wish you the greatest of success in your future endeavors. If you have any questions concerning this matter or the rights described above, or if you need assistance or additional information, please contact [Ochcofrontoffice@va.gov](mailto:Ochcofrontoffice@va.gov).

/s/

Tracey Therit

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[1] OPM, *Practical Tips for Supervisors of Probationers*.

[2] See U.S. Merit Systems Protection Board Report to the President and Congress, *The Probationary Period: A Critical Assessment Opportunity* (August 2005)

[3] *Id.*