



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

Thursday, March 12, 2009

MEMORANDUM FOR: Chief Human Capital Officers

FROM: Kathie Ann Whipple, Acting Director

Subject: Clarification of Procedures for Passover of Compensably-Disabled Preference Eligibles in the Excepted Service

This memorandum clarifies the guidance issued by the Office of Personnel Management on February 9, 2009, regarding the U.S. Court of Appeals for the Federal Circuit's decision in *Gingery v. Department of Defense*. In *Gingery*, the court held that OPM must apply competitive service rules to pass overs of preference eligibles with a 30 percent or more compensable service-connected disability for excepted service positions **that are subject to the appointment procedures in 5 C.F.R. part 302**.

OPM is still analyzing the decision and considering options. In the meantime, to pass over a preference eligible with a compensable service-connected disability of 30 percent or more for an excepted service position that is subject to the appointment procedures in 5 C.F.R. part 302, agencies must send a pass over request to OPM for adjudication. These procedures apply only to excepted service positions covered under title 5, United States Code, which have been excepted from the competitive service by the President or by OPM.

The court's ruling in *Gingery* does not affect hiring for positions (e.g., attorneys) exempt from part 302 procedures pursuant to 5 C.F.R. 302.101(c). The *Gingery* court did not overrule *Patterson v. Department of Interior*, which upheld OPM's requirement that for attorney hiring agencies must follow the principle of veterans' preference as far as administratively feasible.

Should you have questions concerning this procedure, please contact your Human Capital Officer.

cc: Human Resources Directors