



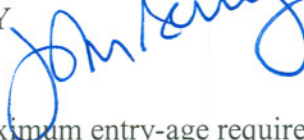
UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

AUG 26 2009

The Director

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: JOHN BERRY
DIRECTOR 

Subject: Change in maximum entry-age requirements for Veterans' Preference Eligibles

On July 2, 2008, the Merit Systems Protection Board (Board) issued a final decision in *Robert P. Isabella v. Department of State and Office of Personnel Management*, 2008 M.S.P.B. 146, that affects preference eligibles who apply for federal positions having a maximum entry-age restriction. The Board decided that the agency's failure to waive the maximum entry-age requirements for Mr. Isabella, a preference eligible veteran, violated his rights under the Veteran Employment Opportunities Act of 1998 (VEOA) because there was no demonstration that a maximum entry-age was essential to the performance of the position.

Based on the Board's decision in *Isabella*, 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. In order to determine whether it must waive a maximum entry-age requirement, an agency must first analyze the affected position to determine whether age is essential to the performance of the position. If the agency decides age is not essential to the position, then it must waive the maximum entry-age requirement for veterans' preference eligible applicants. In instances where the maximum entry-age is waived, the corresponding mandatory retirement age for these individuals will also be higher because it will be reached after 20 years of Law Enforcement Officer (LEO) service for the entitlement to an immediate enhanced annuity.

The same principles set forth above would apply to appointments to other types of positions for which the setting of maximum entry ages are authorized under 5 U.S.C. § 3307. These types of positions are: (1) firefighters, (2) air traffic controllers, (3) United States Park police, (4) nuclear materials couriers, and (5) customs and border patrol officers (subject to the Federal Employees Retirement System, 5 U.S.C. § 8401 *et seq.* only).

Agencies are reminded that they are still required to apply suitability, occupational qualification standards, and medical qualification determinations when waiving the maximum entry-age requirements for preference eligible veterans.

Please contact the OPM Human Capital Officer that services your agency should you have questions concerning this policy change.

cc: Chief Human Capital Officers
Human Resources Directors