

ance as may be necessary to ensure an appeal under this subsection is expedited.

(9) If an employee prevails on appeal under this section, the employee shall be entitled to backpay (as provided in section 5596 of title 5).

(10) If an employee who is subject to a collective bargaining agreement chooses to grieve an action taken under this section through a grievance procedure provided under the collective bargaining agreement, the timelines and procedures set forth in subsection (c) and this subsection shall apply.

(e) WHISTLEBLOWER PROTECTION.—(1) In the case of a covered individual seeking corrective action (or on behalf of whom corrective action is sought) from the Office of Special Counsel based on an alleged prohibited personnel practice described in section 2302(b) of title 5, the Secretary may not remove, demote, or suspend such covered individual under subsection (a) without the approval of the Special Counsel under section 1214(f) of title 5.

(2) In the case of a covered individual who has made a whistleblower disclosure to the Assistant Secretary for Accountability and Whistleblower Protection, the Secretary may not remove, demote, or suspend such covered individual under subsection (a) until—

(A) in the case in which the Assistant Secretary determines to refer the whistleblower disclosure under section 323(c)(1)(D) of this title to an office or other investigative entity, a final decision with respect to the whistleblower disclosure has been made by such office or other investigative entity; or

(B) in the case in which the Assistant Secretary determines not to refer the whistleblower disclosure under such section, the Assistant Secretary makes such determination.

(f) TERMINATION OF INVESTIGATIONS BY OFFICE OF SPECIAL COUNSEL.—(1) Notwithstanding any other provision of law, the Special Counsel (established by section 1211 of title 5) may terminate an investigation of a prohibited personnel practice alleged by an employee or former employee of the Department after the Special Counsel provides to the employee or former employee a written statement of the reasons for the termination of the investigation.

(2) Such statement may not be admissible as evidence in any judicial or administrative proceeding without the consent of such employee or former employee.

(g) VACANCIES.—In the case of a covered individual who is removed or demoted under subsection (a), to the maximum extent feasible, the Secretary shall fill the vacancy arising as a result of such removal or demotion.

(h) DEFINITIONS.—In this section:

(1) The term “covered individual” means an individual occupying a position at the Department, but does not include—

(A) an individual occupying a senior executive position (as defined in section 713(d) of this title);

(B) an individual appointed pursuant to sections 7306, 7401(1), 7401(4), or 7405 of this title;

(C) an individual who has not completed a probationary or trial period; or

(D) a political appointee.

(2) The term “suspend” means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay for a period in excess of 14 days.

(3) The term “grade” has the meaning given such term in section 7511(a) of title 5.

(4) The term “misconduct” includes neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

(5) The term “political appointee” means an individual who is—

(A) employed in a position described under sections 5312 through 5316 of title 5 (relating to the Executive Schedule);

(B) a limited term appointee, limited emergency appointee, or noncareer appointee in the Senior Executive Service, as defined under paragraphs (5), (6), and (7), respectively, of section 3132(a) of title 5; or

(C) employed in a position of a confidential or policy-determining character under schedule C of subpart C of part 213 of title 5, Code of Federal Regulations, or successor regulation.

(6) The term “whistleblower disclosure” has the meaning given such term in section 323(g) of this title.

(Added Pub. L. 115–41, title II, §202(a), June 23, 2017, 131 Stat. 869.)

PRIOR PROVISIONS

A prior section 714 was renumbered section 1914 of this title.

§ 715. Congressional testimony by employees: treatment as official duty

(a) CONGRESSIONAL TESTIMONY.—An employee of the Department is performing official duty during the period with respect to which the employee is testifying in an official capacity in front of either chamber of Congress, a committee of either chamber of Congress, or a joint or select committee of Congress.

(b) TRAVEL EXPENSES.—The Secretary shall provide travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, to any employee of the Department of Veterans Affairs performing official duty described under subsection (a).

(Added Pub. L. 114–223, div. A, title II, §247(b)(1), Sept. 29, 2016, 130 Stat. 890.)

PRIOR PROVISIONS

Prior sections 715 and 716 were renumbered sections 1915 and 1916 of this title, respectively.

§ 717. Limitation on administrative leave

(a) IN GENERAL.—Except as provided in subsection (b), the Secretary may not place any covered individual on administrative leave, or any other type of paid non-duty status without charge to leave, for more than a total of 14 days during any 365-day period.

(b) WAIVER.—The Secretary may waive the limitation under subsection (a) and extend the

¹ So in original.