

## **Evidence to Seek in Discovery and Present at MSPB Hearing**

- Evidence of protected activity
- Evidence that agency officials and employees were aware of the protected disclosures and trying to defend the agency against them
  - Can use requests for admissions of knowledge of whistleblowing
- Evidence of any biased or incomplete investigation of the employee or of the charges against the employee
- Evidence concerning the strength of the evidence supporting the charges
- Evidence of animus toward the employee due to whistleblowing
- Evidence of differing treatment of the whistleblower before and after the disclosures
  - Changes in performance evaluations, awards, promotions or within grade increases
  - Discipline or pre-discipline (warnings, etc.)
  - Job assignments, office assignments
  - Hostile work environment
- Evidence of treatment (discipline or lack of) of similarly situated non-whistleblowers
  - Persons in same chain of command or otherwise similarly situated who engaged in similar misconduct or poor performance
- Evidence on damages – medical, emotional distress, damage to reputation, etc.