



## U.S. MERIT SYSTEMS PROTECTION BOARD

**Case Report for July 10, 2015**

**The U.S. Court of Appeals for the Federal Circuit issued the following precedential decision this week:**

**Petitioner: Cathy Appleberry**

**Respondent: Department of Homeland Security**

**Tribunal: U.S. Court of Appeals for the Federal Circuit**

**Case Number: [2014-3123](#)**

**Review of Arbitration Decision**

**Issuance Date: July 8, 2015**

### **Waiver of Issue - Arbitration**

The petitioner filed a grievance over her performance-based removal with an arbitrator in accordance with procedures set forth in the collective bargaining agreement. Prior to her removal, the petitioner filed three grievances regarding her performance rating and placement on a performance improvement plan, but did not complete the grievance process and invoke arbitration within the requisite time period for any of the grievances. The arbitrator ruled that the petitioner had abandoned the right to challenge her performance rating and placement on a performance improvement plan because she raised those issues in her prior grievances but did not pursue those grievances to arbitration. The arbitrator then denied her removal grievance.

**Holding: The Court affirmed.**

1. The petitioner waived her right to challenge the performance rating or performance improvement plan underlying the removal during her removal grievance because she did not previously complete the grievance process over those issues.

2. The court noted that if the petitioner had opted to appeal her removal to the Board instead of challenging the removal at arbitration, the Board would not have been precluded from considering the performance issues the appellant raised in her prior grievances.

## The U.S. Court of Appeals for the Federal Circuit issued the following nonprecedential decision this week:

**Petitioner:** Edgardo G. Francisco

**Respondent:** Office of Personnel Management

**Tribunal:** U.S. Court of Appeals for the Federal Circuit

**Case Numbers:** [2015-3035](#)

**MSPB Docket No.** SF-0831-14-0436-I-1

**Issuance Date:** July 8, 2015

**Holding:** The court affirmed the Board's final order that the appellant was not entitled to a civil service annuity because the appellant's service was specifically excluded from Civil Service Retirement System coverage.