



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for August 7, 2015

BOARD DECISIONS

Appellant: Nicholas Jay Wilson
Agency: Department of the Navy
Decision Number: [2015 MSPB 48](#)
MSPB Docket No.: DC-0752-15-0038-I-1
Issuance Date: August 5, 2015
Appeal Type: Adverse Action
Action Type: Removal

Applicability of *Egan* to USERRA Claims

The appellant was removed from the position of Resource Analyst, GS-14, based on the revocation of his security clearance. The appellant asserted on appeal that his removal amounted to a violation of the Uniformed Services Employment and Reemployment Rights Act (USERRA). The administrative judge affirmed the agency's removal action pursuant to *Department of the Navy v. Egan*, 484 U.S. 519 (1988). The appellant asserted on petition for review that the revocation of his security clearance violated USERRA, and that *Egan* is inapplicable to USERRA claims, thus giving the Board jurisdiction to review the merits of the revocation.

Holding: The Board affirmed the initial decision.

1. The Supreme Court's holding in *Egan* applies to USERRA claims. The Board does not have authority under USERRA to review security clearance determinations.

The U.S. Court of Appeals for the Federal Circuit issued the following nonprecedential decisions this week:

Petitioner: Calvin Donnel Hardison
Respondent: Office of Personnel Management
Tribunal: U.S. Court of Appeals for the Federal Circuit
Case Number: [2015-3082](#)
MSPB Docket No. DC-0731-14-0552-I-1
Issuance Date: August 5, 2015

Holding: The court affirmed the Board’s final order upholding the petitioner’s removal because substantial evidence supported the Board’s finding that the petitioner made material, intentional false statements in his Form OF 306.

Petitioner: Robert Michael Miller
Respondent: Merit Systems Protection Board
Intervenor: Federal Deposit Insurance Corporation
Tribunal: U.S. Court of Appeals for the Federal Circuit
Case Number: [2015-3054](#)
MSPB Docket No. SF-1221-13-0574-W-2
Issuance Date: August 6, 2015

Holding: The court affirmed the Board’s final order dismissing the petitioner’s Individual Right of Action (“IRA”) appeal because the petitioner’s disclosures raised in his grievance were covered by 5 U.S.C. § 2302(b)(9), not 5 U.S.C. § 2302(b)(8), and because the petitioner failed to exhaust his administrative remedies with respect to the disclosures he raised outside of the grievance process.

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