



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for August 14, 2015

BOARD DECISIONS

Appellant: Timothy Allen Rainey
Agency: Department of State
Decision Number: [2015 MSPB 49](#)
MSPB Docket No.: DC-1221-14-0898-W-1
Issuance Date: August 6, 2015
Appeal Type: Individual Right of Action
Action Type: Retaliation

Whistleblower Protection Act Jurisdiction

The appellant filed an Individual Right of Action appeal alleging that the agency stripped him of certain job duties and gave him a poor performance rating after he refused to follow an order that would have required him to violate federal acquisition regulations and training certification procedures. The administrative judge dismissed the appeal for lack of jurisdiction, finding that the appellant's claim of retaliation based on refusal to violate acquisition regulations and training procedures did not amount to a nonfrivolous allegation that he refused to obey an order that would require him to violate a law.

Holding: The Board affirmed the initial decision.

1. While employees are protected from whistleblower retaliation for refusing to obey an order that would require a violation of the law under 5 U.S.C. § 2302(b)(9)(D), the Supreme Court made clear in *Department of Homeland Security v. MacLean*, 135 S. Ct. 913 (2015) that this protection does not extend to violations of an agency regulation or policy.

The U.S. Court of Appeals for the Federal Circuit issued the following nonprecedential decisions this week:

Petitioner: Harroll Ingram

Respondent: Department of the Army

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

Case Number: [2015-3110](#)

MSPB Docket No. AT-1221-14-0725-W-1

Issuance Date: August 10, 2015

Holding: The court affirmed the Board's final order denying the appellant's petition for review based on the appellant's failure to show that he suffered a personnel action within the meaning of the Whistleblower Protection Act.

Petitioner: Kenneth M. Pedeleose

Respondent: Department of Defense

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

Case Number: [2015-3090](#)

MSPB Docket No. AT-1221-14-0260-W-1

Issuance Date: August 10, 2015

Holding: The court affirmed the Board's final decision holding that, although the appellant established that some of his disclosures were a contributing factor in his 14 day suspension under the "knowledge timing test," the agency would nonetheless have taken the same action absent the protected disclosures.

Petitioner: Horace Lee Wilson

Respondent: Department of the Army

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

Case Number: [2015-3077](#)

MSPB Docket No. AT-0752-13-0551-I-1

Issuance Date: August 11, 2015

Holding: The court affirmed the Board's final order sustaining the appellant's removal from the position of Administrative Assistant based on numerous charges of misconduct.

Petitioner: Jaime Gumbs
Respondent: Department of Health and Human Services
Tribunal: U.S. Court of Appeals for the Federal Circuit
Case Number: [2015-3194](#)
MSPB Docket No. DA-0752-13-0648-I-1
Issuance Date: August 12, 2015

Holding: The court affirmed the Board's final order sustaining the appellant's removal from the position of Medical Officer based on charges of failure to maintain a valid medical license and practicing medicine without a valid license as a condition of employment. In a dissenting opinion, Judge Dyk stated that he would have remanded the case for additional proceedings on the issue of what was required to complete a medical license renewal application, and for determination of a more appropriate penalty.

Petitioner: Ty K. Sanders
Respondent: Department of Homeland Security
Tribunal: U.S. Court of Appeals for the Federal Circuit
Case Number: [2015-3080](#)
MSPB Docket No. DA-0752-13-0313-I-1
Issuance Date: August 13, 2015

Holding: The court affirmed the Board's final order sustaining the appellant's removal based on a charge that he was not fit for duty in the position because the action was supported by the conclusions of the first set of medical examiners, even though they had reached a result opposite to another set of medical examiners.

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