



## U.S. MERIT SYSTEMS PROTECTION BOARD

### Case Report for February 26, 2016

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#### BOARD DECISIONS

**Appellant: Rick D. Salerno**

**Agency: Department of the Interior**

**Decision Number: [2016 MSPB 10](#)**

Docket Number: SF-1221-14-0756-W-1

Issuance Date: February 22, 2016

Appeal Type: Individual Right of Action (IRA)

#### **IRA Jurisdiction**

##### **Knowledge/Timing Test**

The appellant alleged that the agency took a variety of personnel actions against him in retaliation for disclosures he made to OSC concerning the adequacy of the agency's law enforcement communication security system. The administrative judge dismissed the appeal for lack of jurisdiction.

**Holding: The Board found that the appellant met his jurisdictional burden with respect to his claim that a 30-day suspension was reprisal for disclosures to OSC. Accordingly, the Board remanded for further adjudication.**

- 1. The Board has jurisdiction over an IRA appeal if the appellant has exhausted his administrative remedies before OSC and makes nonfrivolous allegations that (1) he made a protected disclosure described under 5 U.S.C. § 2302(b)(8) or engaged in protected activity**

described under 5 U.S.C. § 2302(b)(9)(A)(i), (B), (C), or (D), and (2) the disclosure or protected activity was a contributing factor in the agency's decision to take or fail to take a personnel action as defined by 5 U.S.C. § 2302(a).

2. A nonfrivolous allegation of a protected whistleblowing disclosure is an allegation of facts that, if proven, would show that the appellant disclosed a matter that a reasonable person in his position would believe evidenced one of the categories listed in 5 U.S.C. § 2302(b)(8). The disclosure must be specific and detailed, not vague allegations of wrongdoing. The appellant's disclosure failed to meet that standard because it constituted no more than a general philosophical or policy disagreement with the agency regarding law enforcement communication security issues.
3. Although the appellant's disclosures were insufficient under 5 U.S.C. § 2302(b)(8), his disclosure to OSC constituted protected activity under 5 U.S.C. § 2302(b)(9)(C), which guards against reprisal for disclosing information to OSC "in accordance with applicable provisions of law." Further, the appellant nonfrivolously alleged that this protected activity was a contributing factor in his 30-day suspension. The record established that the deciding official was aware of the protected activity and issued the suspension within 15 months of that activity, satisfying the knowledge/timing test. Accordingly, with respect to his suspension and § 2302(b)(9), the appellant met his jurisdictional burden.
4. The Board lacks the jurisdiction to hear the appellant's allegation that OSC committed harmful error by not further investigating his claims.

**Appellant: Angela Campbell**

**Agency: Office of Personnel Management**

**Decision Number: [2016 MSPB 11](#)**

Docket Number: CH-0845-15-0605-I-1

Issuance Date: February 25, 2016

Appeal Type: FERS - Collection of Overpay. Debts

Action Type: Retirement/Benefit Matter

**OPM Overpayment**

**Status Quo Ante**

The appellant challenged OPM's reconsideration decision, which declined to waive or otherwise modify an overpayment that reportedly stemmed from the agency having neglected to reduce the annuity of the appellant's late husband to

account for a survivor benefit election. While the appeal was pending, OPM indicated that it had rescinded its decision and the administrative judge dismissed for lack of jurisdiction.

**Holding: The Board granted the petition for review, vacated the initial decision, and remanded the appeal for further adjudication.**

- 1. If OPM completely rescinds its final decision, the Board no longer has jurisdiction over the appeal in which that decision is at issue. However, complete rescission requires that OPM return the appellant to the status quo ante.**
- 2. OPM withheld \$1,122.30 from the appellant's late husband's basic annuity based upon the purported overpayment, pursuant to exigent collection provisions. OPM has never refunded that money. On remand, the administrative judge must determine whether the appellant is the proper beneficiary of that accrued but unpaid annuity, pursuant to 5 U.S.C. §§ 8424(d), (g). If so, the appellant has not been returned to status quo ante.**

## COURT DECISIONS

### NONPRECEDENTIAL:

Petitioner: Phillip Steffen, Lara Beasley, Samir George Zakhem

Respondent: Department of the Army

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

Case Number: [2015-3205](#)

MSPB Docket No. Nos. DC-0752-14-0432-I-1, DC-0752-13-3391-I-1, DC-0752-13-1004-I-1, DC-0752-13-1838-I-1

Issuance Date: February 22, 2016

**Holding:** The Court affirmed the initial decision of the Board, which became the final decision after a split vote by the Board members, upholding the appellants' furloughs over objections that Unit Identification Codes (UIC) were an improper basis for deciding which employees to furlough.