

U.S. Merit Systems Protection Board:
Frequently Asked Questions about the Lack of Board Quorum and Lack of
Board Members
UPDATED: February 10, 2021

1. How are the 3 Board members appointed?

Board members are nominated by the President and confirmed by the Senate. The Chairman is separately nominated by the President and confirmed by the Senate. The Vice Chairman is designated by the President. The Board members serve 7-year staggered terms. See [5 U.S.C. §§ 1201](#) and [1202](#); [5 C.F.R. § 1200.2](#).

The Board currently has no sitting members. Prior to March 1, 2019, the Board operated for over two years without a quorum. Board members Anne M. Wagner and Susan Tsui Grundmann left on March 1, 2015, and January 6, 2017, respectively. Board Member Mark A. Robbins, who served most recently as Vice Chairman of the Board, served as the sole Board member from January 7, 2017, through February 28, 2019, when his statutory term ended.

2. What is the impact of a lack of quorum and Board members on MSPB operations?

As to the executive leadership of the Board, MSPB General Counsel Tristan Leavitt has assumed the responsibilities for the executive and administrative functions vested in the Chairman in accordance with MSPB's continuity of operations plan.

As to the adjudicatory authorities of the Board, because there are no Board members, the Board is unable to issue final decisions on petitions for review. See generally [5 U.S.C. § 1204\(a\)](#); [5 C.F.R. § 1200.3](#).

3. Can administrative judges (AJs) issue initial decisions when there is a lack of Board quorum or Board members?

Yes, AJs may and have continued to issue initial decisions since the lack of quorum began, pursuant to longstanding [delegated authority](#). If neither party files a petition for review to the MSPB, the AJ's decision will become the final decision of the Board and may be appealed to an appropriate court or tribunal. See [5 U.S.C. § 7703](#). If either party files a petition for review to the MSPB, a Board decision cannot be issued until a quorum of at least two Board members is restored.

4. Can the Board issue decisions on petitions for review without a quorum or Board members?

Petitions for review received before January 7, 2017, and for which the voting process was not completed before the Board lost a quorum, cannot be issued until a quorum is restored. Petitions for review received after January 7, 2017, have been acknowledged by the Office of the Clerk of the Board and processed according to current Board procedures. However, the Board cannot issue decisions on these petitions until a quorum is restored. General information about the number of pending petitions for review since the lack of quorum began is available in the [e-FOIA Reading Room](#) of MSPB's website.

5. Can the Board issue decisions on requests to withdraw petitions for review?

Yes. Pursuant to the May 11, 2018 [Policy Regarding Clerk's Authority to Grant Requests to Withdraw Petitions for Review](#), and the Board's 2011 Manual on [Organization Functions and Delegations of Authority](#), the Clerk of the Board may exercise its delegated adjudicatory authority to "grant a withdrawal of a petition for review when requested by a petitioner."

6. How are appellants advised of their administrative appellate review or judicial options during the period in which there are no sitting Board members?

A party's administrative and/or judicial appeal rights will continue to be listed at the end of every initial decision. If the appellant, the agency, or both file a petition for review, it will be acknowledged and processed by the Board, as explained above. The petition for review filing deadlines will *not* be tolled (i.e., stopped) during any lack of quorum. This means that parties to a case who wish to file a petition for review must do so within 35 days of issuance of the initial decision, as required by the Board's adjudicatory regulations at [5 C.F.R. § 1201.114](#). However, the Board cannot issue a decision until a quorum is restored by the nomination and confirmation of at least two Board members.

If neither party to a case files a petition for review, the AJ's initial decision will become the final decision of the Board. An appellant may choose to exercise his or her review rights, which may include an appeal to the U.S. Court of Appeals for the Federal Circuit, U.S. District Court, an appropriate circuit court of appeal, or the Equal Employment Opportunity Commission, depending on the type of appeal and claims raised. *See* [5 U.S.C. § 7703](#).

The parties are informed of the current Board lack of quorum and members in initial decisions, and in acknowledgment notices issued by the Office of the

Clerk of the Board, if either or both parties file a petition for review with the Board.

7. When does the Board anticipate having a quorum restored?

It is not possible to determine exactly when the quorum will be restored. No Board member nominations are currently pending before the Senate. As explained in #1 above, after the President nominates Board members, they must be confirmed by the Senate before they can be sworn in as Board members.

8. Has the Board previously experienced a lack of quorum?

Yes. The Board was briefly without a quorum in 2003.

9. Has the Board previously experienced a lack of any sitting members?

No.

10. How will the parties know when a quorum is present?

We will post information on the [MSPB website](#), issue a [press release](#), and place an announcement on [Twitter](#). We may communicate this information in other ways, as appropriate.

11. Is there a point of contact for other questions?

For further information, please contact the Office of the Clerk of the Board via email to mspb@mspb.gov or via phone at 202-653-7200. Additional information about the Board's organizational structure can be found on the website at www.mspb.gov, in its [agency plans and annual reports](#), and in its current [Organization Functions and Delegations of Authority](#).