

**U.S. Merit Systems Protection Board:
Frequently Asked Questions about the Lack of Board Quorum and Lack of
Board Members**

UPDATED: March 4, 2022

1. How are the 3 Board members appointed?

All Board members must be nominated by the President and confirmed by the Senate. Designation as Chair is a separate nomination by the President which requires confirmation by the Senate. The President can designate a Vice Chair with no additional Senate action required. 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 two members – Vice Chair Raymond Limon and Member Tristan Leavitt – who were confirmed by the Senate on March 1, 2022 and sworn into their duties as members of the Board on March 4, 2022. Between January 7, 2017, and March 3, 2022,¹ the Board did not have a quorum of members and therefore could not vote on any petitions for review.

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

As to the adjudicatory authorities of the Board, the Board was unable to issue final decisions on petitions for review between January 7, 2017, and March 3, 2022. See generally [5 U.S.C. § 1204\(a\)](#); [5 C.F.R. § 1200.3](#). Now that the quorum of members has been restored effective March 4, 2022, the Board will soon begin issuing final decisions on petitions for review and other cases pending before it. Issuance of these decisions will not be immediate. It will take time for the Board members to receive necessary training and begin reviewing and voting on cases and for the Board's administrative staff to issue the decisions in these cases. This process will be conducted as expeditiously as possible. 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.

As to the executive leadership of the Board, between March 1, 2019, and March 3, 2022, Tristan Leavitt (who served as General Counsel before his confirmation as Member) fulfilled the responsibilities for the executive and administrative functions vested in the Chair in accordance with MSPB's continuity of operations plan. Effective March 4, 2022, those responsibilities now reside with Vice Chair Raymond Limon, who will serve as Acting Chair until a Chair is confirmed by the Senate.

¹ The March 3, 2022, version of this FAQ mistakenly noted that the quorum was restored on March 1, 2022.

3. Could administrative judges (AJs) issue initial decisions when there was 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 becomes 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 filed a petition for review to the MSPB, a Board decision could not be issued until a quorum of at least two Board members was restored.

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

No. Petitions for review received before January 7, 2017, and for which the voting process was not completed before the Board lost a quorum, could not be issued until a quorum was 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. The Board could not issue decisions on these petitions until a quorum was 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 were appellants advised of their administrative appellate review or judicial options during the period in which there were no sitting Board members?

A party's administrative and/or judicial appeal rights continued to be listed at the end of every initial decision. If the appellant, the agency, or both filed a petition for review, it was acknowledged and processed by the Board, as explained above. The petition for review filing deadlines were *not* tolled (i.e., stopped) during any lack of quorum. This means that parties to a case who wished to file a petition for review must have done 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 could not issue a decision until a quorum was restored by the nomination and confirmation of at least two Board members (which occurred on March 4, 2022).

If neither party to a case filed a petition for review, the AJ's initial decision became the final decision of the Board. An appellant could 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 were 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 filed a petition for review with the Board.

7. 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](#).