



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for November 14, 2014

BOARD DECISIONS

Appellant: Stephen B. Linder
Agency: Department of Justice
Decision Number: [2014 MSPB 84](#)
MSPB Docket Number: CH-1221-14-0058-W-1
Issuance Date: November 7, 2014
Appeal Type: Individual Right of Action Appeal
Action Type: Retaliatory Reassignment

Interpretation of 5 U.S.C. § 2302(b)(9) under the WPEA Allegation of Abuse of Authority under 5 U.S.C. § 2302(b)(8)

In a criminal proceeding in U.S. District Court, the appellant disclosed that agency employees were performing misconduct by interfering with his ability to defend himself against the charges. The court dismissed the indictment against the appellant based on his disclosures. After the dismissal, the agency reassigned him, at which point the appellant filed an individual right of action appeal alleging that his reassignment was in retaliation for the disclosures to the court. At the Board, the administrative judge dismissed the appeal for lack of jurisdiction based on a finding that the appellant's disclosure did not constitute protected activity within the scope of 5 U.S.C. § 2302(b)(9) pertaining to the exercise of any appeal, complaint, or grievance.

Holding: The Board granted the appellant's petition for review, vacated the initial decision, and remanded the case to the regional office for additional proceedings.

1. Nothing in the WPEA changed the Board's long established precedent concerning the meaning of the terms "appeal, complaint, or grievance" in

the statutory language. Filing a motion to dismiss an indictment does not constitute an initial step toward taking legal action against an employer for a perceived violation of employment rights. Thus, the appellant's disclosure to the court did not fall within the protections of 5 U.S.C. § 2302(b)(9).

2. The appellant's disclosure to a federal judge of threats by agency officials of criminal charges and adverse employment actions toward potential witnesses for the appellant in his criminal trial was covered by 5 U.S.C. § 2302(b)(8) as an allegation of an abuse of authority.

The U.S. Court of Appeals for the Federal Circuit issued the following nonprecedential decision this week

Petitioner: Yong I. Fenlon

Respondent: Department of the Navy

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

Case Number: [2014-3088](#)

MSPB Docket No. SF-0752-11-0459-I-4

Issuance Date: November 7, 2014

Holding: The Court affirmed the Board's dismissal of the petition for review pursuant to the terms of a settlement agreement.

Petitioner: Maria Havrilla

Respondent: Merit Systems Protection Board

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

Case Number: [2014-3122](#)

MSPB Docket No. PH-844E-14-0473-I-1

Issuance Date: November 7, 2014

Holding: The Court affirmed the Board's dismissal for lack of jurisdiction because the Board lost jurisdiction when OPM rescinded its reconsideration decision.

Petitioner: Juanito Izon
Respondent: Office of Personnel Management
Tribunal: U.S. Court of Appeals for the Federal Circuit
Case Number: [2014-3094](#)
MSPB Docket No. SF-0831-13-4901-I-1
Issuance Date: November 7, 2014

Holding: The Court affirmed the Board's denial of the petitioner's application for a deferred retirement annuity under the Civil Service Retirement System because he did not establish that any of his any of his employment was "covered service" under the Civil Service Reform Act.

Petitioner: Charles G. Johnson
Respondent: Merit Systems Protection Board
Tribunal: U.S. Court of Appeals for the Federal Circuit
Case Number: [2014-3074](#)
MSPB Docket No. DE-0353-10-0501-B-1
Issuance Date: November 7, 2014

Holding: The Court affirmed the Board's dismissal for lack of jurisdiction because the petitioner did not establish that he had fully or partially recovered from his original work related injury.

Petitioner: Peggy Ann Wishneski
Respondent: Office of Personnel Management
Tribunal: U.S. Court of Appeals for the Federal Circuit
Case Number: [2014-3128](#)
MSPB Docket No. AT-0831-13-0194-I-1
Issuance Date: November 7, 2014

Holding: The Court affirmed the Board's finding that the petitioner was not entitled to elect a survivor annuity for her husband because she did not timely exercise her right of election.

Petitioner: Renee Priscilla Cothron-Mallett
Respondent: Merit Systems Protection Board
Intervenor: Equal Employment Opportunity Commission
Tribunal: U.S. Court of Appeals for the Federal Circuit
Case Number: [2014-3035](#)
MSPB Docket No. DC-0752-12-0828-I-1
Issuance Date: November 10, 2014

Holding: The Court affirmed the Board's dismissal for lack of jurisdiction because the petitioner did not establish that her disability retirement was involuntary.

Petitioner: Deonne R. New-Howard
Respondent: Department of Veterans Affairs
Tribunal: U.S. Court of Appeals for the Federal Circuit
Case Number: [2013-3180](#)
MSPB Docket No. PH-0752-07-0319
Issuance Date: November 10, 2014

Holding: The Court affirmed the Board's decision to uphold the petitioner's removal based on a finding that the agency properly denied her request for sick leave.

Petitioner: Anthony J. Boddie
Respondent: Department of the Treasury
Tribunal: U.S. Court of Appeals for the Federal Circuit
Case Number: [2014-3125](#)
MSPB Docket No. DA-0752-13-0139-I-1
Issuance Date: November 12, 2014

Holding: The Court affirmed the Board's decision to uphold the petitioner's removal based on a finding that the petitioner's failure to timely pay federal income taxes was established.

Petitioner: Rochester Holmes
Respondent: Office of Personnel Management
Tribunal: U.S. Court of Appeals for the Federal Circuit
Case Number: [2014-3127](#)
MSPB Docket No. AT-0831-13-0622-I-3
Issuance Date: November 12, 2014

Holding: The Court affirmed the Board's findings that OPM properly reduced the petitioner's retirement annuity and that two prior settlement agreements had no bearing on the Board's decision.

Petitioner: Eugene D. Johnson
Respondent: Merit Systems Protection Board
Tribunal: U.S. Court of Appeals for the Federal Circuit
Case Number: [2014-3104](#)
MSPB Docket No. DC-3443-14-0150-I-1
Issuance Date: November 12, 2014

Holding: The Court affirmed the Board's jurisdictional dismissal because the petitioner failed to articulate a specific claim of Board jurisdiction.

Petitioner: Shawntai T. Jones
Respondent: Department of the Army
Tribunal: U.S. Court of Appeals for the Federal Circuit
Case Number: [2014-3065](#)
MSPB Docket No. AT-0752-12-0426-A-1
Issuance Date: November 7, 2014

Holding: The Court affirmed the Board's denial of the petitioner's motion for attorney fees based on the Board's findings that none of the legal work for which she was billed contributed to the outcome of the case, and the Equal Access to Justice Act does not authorize the award of attorney fees for legal services rendered before the Board.

Petitioner: Victoria Miller

Respondent: Merit Systems Protection Board

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

Case Number: [2014-3132](#)

MSPB Docket No. AT-3330-13-0715-I-1

Issuance Date: November 12, 2014

Holding: The Court affirmed the Board's dismissal of the petitioner's appeal for lack of jurisdiction because she failed to exhaust her administrative remedies before the Department of Labor.

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