



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for November 28, 2014

BOARD DECISIONS

Appellant: Margaret M. Reed
Agency: Department of Veterans Affairs
Decision Number: [2014 MSPB 85](#)
MSPB Docket No.: CH-1221-13-1557-W-1
Issuance Date: November 25, 2014
Appeal Type: Individual Right of Action
Action Type: Suspension

Protected Disclosures Under the WPEA
Personnel Actions Under the WPEA
Contributing Factors Under the WPEA
Perceived Whistleblower Claims Under the WPEA

After the appellant's grievance of an official admonishment was denied, she requested to meet with her facility Director because she believed the grievance process was futile. The appellant's supervisors threatened to discipline her if she went through with the meeting. She subsequently met with the Director to discuss the grievance process, and also alleged that her supervisors retaliated against her by failing to follow grievance procedures. After that meeting, the appellant's supervisor proposed to suspend her for three days based on complaints from various agency officials. The suspension was effectuated, and the admonishment was considered in the decision to suspend her. The admonishment was eligible to be removed from the appellant's personnel file three months prior to the suspension, but her supervisor elected to not remove it. The appellant filed an IRA with the Board, alleging that the suspension was issued as reprisal for her complaints about the grievance. At the Board, the administrative judge dismissed the appeal for lack of jurisdiction, finding that the appellant failed to make a nonfrivolous

allegation that she made a protected disclosure, and that the appellant's grievance was not protected activity under the Whistleblower Protection Enhancement Act (WPEA).

Holding: The Board remanded the case to the regional office for additional proceedings.

- 1. The filing of a grievance that does not itself seek to remedy whistleblower reprisal is not a protected disclosure under the WPEA.**
- 2. The proposed three-day suspension, the decision effectuating the suspension, the Assistant Chief's alleged refusal to remove the admonishment from the appellant's personnel file, and the Chief and Assistant Chief's threats of discipline were all personnel actions under the WPEA.**
- 3. The Board did not have jurisdiction over the appellant's allegations of irregularities in the grievance process because she did not allege that these irregularities occurred as reprisal for any disclosure.**
- 4. The Board held that the appellant failed to nonfrivolously allege that any of her claimed protected disclosures were a contributing factor to her personnel actions.**
- 5. The Board stated that nothing in the WPEA precludes the Board from considering, at the jurisdictional stage, whether the appellant made a nonfrivolous allegation that a disclosure was a contributing factor to an agency decision.**
- 6. The Board remanded the proceedings for further development of the record because the appellant's claims suggested that she may have been attempting to argue that the agency perceived her to be a whistleblower, but she was not given instructions regarding how to establish Board jurisdiction over her appeal as a perceived whistleblower.**

- The U.S. Court of Appeals for the Federal Circuit did not issue any precedential or nonprecedential decisions this week**