



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for February 6, 2015

BOARD DECISIONS

Appellant: William Ralph Pumphrey

Agency: Department of Defense

Consolidation: Pentagon Force Protection Agency v. Department of Defense

Decision Number: [2015 MSPB 10](#)

MSPB Docket No.: DC-0752-13-1077-I-1 and consolidation DC-0752-14-0222-I-1

Issuance Date: January 30, 2015

Appeal Type: Adverse Action

Action Type: Furlough

Pre-Decisional Due Process

The appellant was furloughed for three days from his Police Officer position due to sequestration. After receiving his notice of proposed furlough, the appellant requested that the agency grant him 4 hours of official time and a 14 day extension of time to help him respond to the notice. The agency denied both requests. The appellant appealed his furlough to the Board, and in his appeal alleged that the agency's failure to grant his requests constituted a due process violation and harmful error. He also requested a protective order from the Board because the agency would not allow him to choose the days of the week on which he served his furlough. The administrative judge affirmed the furlough, found that the appellant did not establish harmful error, and denied the request for the protective order because the agency's denial of the appellant's requests did not constitute harassment or retaliation necessitating

protection from the Board.

Holding: The Board affirmed the initial decision, and supplemented the analysis to address the appellant's due process argument and to deny the request for a protective order.

1. The agency's denial of additional time to respond to the furlough notice did not violate due process because the 14-day reply period provided a meaningful opportunity, and reasonable time, to respond.
2. The Board denied the appellant's request for a protective order because it did not contain sufficient information establishing that he was, or could be, subjected to the type of harassment a protective order is meant to address.

The U.S. Court of Appeals for the Federal Circuit issued the following nonprecedential decisions this week:

Petitioner: Manuel Losada

Respondent: Department of Defense

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

Case Number: [2014-3047](#)

MSPB Docket No. DC-0752-10-0800-M-1

Issuance Date: February 4, 2015

Holding: The Court affirmed the Board's decision upholding the petitioner's removal based on a finding that the agency demonstrated by clear and convincing evidence that it would have removed the petitioner even if he did not make a protected disclosure.

Petitioner: Ralph M. Malone

Respondent: Merit Systems Protection Board

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

Case Number: [2014-3211](#)

MSPB Docket No. DE-0831-14-0311-I-1

Issuance Date: February 4, 2015

Holding: The Court affirmed the Board's dismissal of the petitioner's appeal for lack of jurisdiction based on a finding that OPM had not issued an appealable final

decision, nor had it constructively denied the petitioner a final decision.

Petitioner: Jimmy Tyler Rebish

Respondent: Merit Systems Protection Board

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

Case Number: [2014-3085](#), [2014-3087](#)

MSPB Docket No. SF-1221-13-0494-W-1 & SF-0752-13-0362-I-1

Issuance Date: February 4, 2015

Holding: The Court affirmed the Board's decisions to dismiss both of the petitioner's appeals for lack of jurisdiction. In the first appeal, the petitioner failed to make a non-frivolous allegation that his deciding official knew of his disclosure. In the second appeal, the petitioner failed to make a non-frivolous allegation that his retirement was voluntary.

Petitioner: Yong I. Fenlon

Respondent: Department of the Navy

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

Case Number: [2014-3145](#)

MSPB Docket No. SF-0432-04-0076-X-1

Issuance Date: February 5, 2015

Holding: The Court affirmed the Board's dismissal of the agency's petition for enforcement due to a settlement agreement between the parties.

Petitioner: Richie Leon Hall

Respondent: Merit Systems Protection Board

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

Case Number: [2014-3170](#)

MSPB Docket No. DC-3443-14-0725-I-1

Issuance Date: February 5, 2015

Holding: The Court affirmed the Board's dismissal of the petitioner's appeal for lack of jurisdiction based on a finding that the agency's decisions to reassign the petitioner and deny him a Living Quarter Allowance were not actions over which the Board has jurisdiction.

Federal Register Notices:

The Board issued its final rule on jurisdiction on January 28, 2015.

<http://www.gpo.gov/fdsys/pkg/FR-2015-01-28/pdf/2015-01575.pdf>

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