



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for July 31, 2015

BOARD DECISIONS

Appellant: Stephen M. Rodgers

Agency: Department of the Navy

Consolidation: Navy Munitions Command I v. Department of the Navy

Decision Number: [2015 MSPB 45](#)

Docket No. DC-0752-13-0799-I-1

Consolidation Docket No. DC-0752-14-0383-I-1

Issuance Date: July 23, 2015

Appeal Type: Adverse Action

Action Type: Furlough

Due Process

The appellant was furloughed for six days from his position as an Attorney Advisor with the Navy Munitions Command (NMC). The deciding official previously requested that the entire NMC be subject to an exception to the proposed furlough, but the request was denied. In a consolidated initial decision, the administrative judge (AJ) affirmed the furlough. The appellant argued in his petition for review that: (1) he was denied due process when the agency effectuated the furlough; (2) the agency committed harmful procedural error in processing the furlough; (3) the agency treated the appellant differently than other similarly situated employees; (4) the agency did not apply its exception properly; and (5) the AJ committed certain adjudicatory errors.

Holding: The Board affirmed the initial decision.

1. The appellant was provided a meaningful opportunity to respond because even though the deciding official did not have the ability to issue an organization-wide exemption, he was empowered to determine whether the appellant fit within one of the categorical exemptions to the furlough.

Appellant: Sandra Epley
Agency: Inter-American Foundation
Decision Number: [2015 MSPB 46](#)
MSPB Docket No.: DC-0432-15-0032-I-1
Issuance Date: July 24, 2015
Appeal Type: Adverse Action
Action Type: Removal

Statutory Construction Board Appeal Rights

The appellant was removed from the position of Program Administrator for failing to meet performance standards. The agency disputed the Board's jurisdiction over the appellant's appeal because the Inter-American Foundation is a government corporation statutorily exempted from Board jurisdiction. The AJ dismissed the appeal for lack of jurisdiction based on findings that the agency is statutorily exempt from Chapter 43, and that the appellant failed to otherwise make a non-frivolous allegation that she had Board appeal rights under Chapter 75.

Holding: The Board granted the petition for review, reversed the finding of no jurisdiction, and remanded the case to the regional office for further proceedings.

1. The Inter-American Foundation is a government corporation statutorily excluded from Chapter 43.
2. The Board found that there is nothing in the agency's statute or history to support a conclusion that Congress intended the agency to be excluded from Chapter 75.

Appellant: Michael A. Murphy Boston
Agency: Department of the Army
Decision Number: [2015 MSPB 47](#)

MSPB Docket No.: DC-3330-14-1058-I-1

Issuance Date: July 28, 2015

Appeal Type: Veterans Employment Opportunities Act (VEOA)

Action Type: Nonselection

VEOA

Veterans' Preference Hiring Authority

The appellant, a preference-eligible veteran, filed a VEOA appeal requesting corrective action when he was not selected for the position of Intelligence Specialist, GS-13. The agency asserted that the appellant was not entitled to veterans' preference, that it properly placed him only on the status candidate list as an applicant with prior federal service, and that the Title 5 provisions relating to veterans' preference rights did not apply here because the position for which the appellant applied was governed by 10 U.S.C. § 1601, which permits excepted service hiring for defense intelligence positions. The AJ found that the appellant was not entitled to a hearing because there were no genuine issues of material fact and the appellant otherwise failed to show that the agency violated his veterans' preference rights.

Holding: The Board denied the petition for review, but affirmed the initial decision as modified to find that the agency was not required to apply Title 5 veterans' preference rights and the appellant was not entitled to veterans' preference.

1. Because Title 10 appointments are made without regard to provisions of any other law relating to the appointment of employees, Title 5 veterans' preference rules do not apply to positions filled under Title 10.

2. The agency's implementing regulations were found reasonable and consistent with the statute to the extent that they require the application of veterans' preference as a tie-breaker for the agency's external new employee hiring for national intelligence positions.

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

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