



## U.S. MERIT SYSTEMS PROTECTION BOARD

### Case Report for August 7, 2015

#### BOARD DECISIONS

**Appellant:** Nicholas Jay Wilson  
**Agency:** Department of the Navy  
**Decision Number:** [2015 MSPB 48](#)  
**MSPB Docket No.:** DC-0752-15-0038-I-1  
**Issuance Date:** August 5, 2015  
**Appeal Type:** Adverse Action  
**Action Type:** Removal

#### **Applicability of *Egan* to USERRA Claims**

The appellant was removed from the position of Resource Analyst, GS-14, based on the revocation of his security clearance. The appellant asserted on appeal that his removal amounted to a violation of the Uniformed Services Employment and Reemployment Rights Act (USERRA). The administrative judge affirmed the agency's removal action pursuant to *Department of the Navy v. Egan*, 484 U.S. 519 (1988). The appellant asserted on petition for review that the revocation of his security clearance violated USERRA, and that *Egan* is inapplicable to USERRA claims, thus giving the Board jurisdiction to review the merits of the revocation.

**Holding:** The Board affirmed the initial decision.

**1. The Supreme Court's holding in *Egan* applies to USERRA claims. The Board does not have authority under USERRA to review security clearance determinations.**

**The U.S. Court of Appeals for the Federal Circuit issued the following nonprecedential decisions this week:**

**Petitioner:** Calvin Donnel Hardison  
**Respondent:** Office of Personnel Management  
**Tribunal:** U.S. Court of Appeals for the Federal Circuit  
**Case Number:** [2015-3082](#)  
**MSPB Docket No.** DC-0731-14-0552-I-1  
**Issuance Date:** August 5, 2015

**Holding:** The court affirmed the Board’s final order upholding the petitioner’s removal because substantial evidence supported the Board’s finding that the petitioner made material, intentional false statements in his Form OF 306.

**Petitioner:** Robert Michael Miller  
**Respondent:** Merit Systems Protection Board  
**Intervenor:** Federal Deposit Insurance Corporation  
**Tribunal:** U.S. Court of Appeals for the Federal Circuit  
**Case Number:** [2015-3054](#)  
**MSPB Docket No.** SF-1221-13-0574-W-2  
**Issuance Date:** August 6, 2015

**Holding:** The court affirmed the Board’s final order dismissing the petitioner’s Individual Right of Action (“IRA”) appeal because the petitioner’s disclosures raised in his grievance were covered by 5 U.S.C. § 2302(b)(9), not 5 U.S.C. § 2302(b)(8), and because the petitioner failed to exhaust his administrative remedies with respect to the disclosures he raised outside of the grievance process.

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